

VETOES.

BILLS FILED IN THE OFFICE OF THE SECRETARY OF THE COMMONWEALTH BY THE GOVERNOR, WITH HIS OBJECTIONS THERETO, WITHIN THIRTY DAYS AFTER THE ADJOURNMENT OF THE LEGISLATURE, ON THE 6TH DAY OF JUNE, 1879, AND THE 9TH DAY OF JUNE, 1881.

No. 1.

A SUPPLEMENT

To an act entitled "An act authorizing the election of commissioners' clerk in the county of York."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the qualified electors of the county of York shall, at the general election on the first Tuesday following the first Monday of November next, and every three years thereafter, elect one person to fill the office of clerk to the commissioners for said county, whose term of office shall commence on the first day of January, Anno Domini one thousand eight hundred and eighty.

HENRY M. LONG,
Speaker of the House of Representatives.
CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 10, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, House bill No. 348, entitled "A supplement to an act entitled 'An act authorizing the election of commissioners' clerk in the county of York.'"

I am of the opinion that this act is not only unnecessary, but in conflict with the seventh section of the third article of the Constitution, which prohibits special legislation regulating the affairs of counties. Article eight section two of the Constitution fixes the time for holding the general and township elections, and all officers theretofore elected at other dates, whether under general or special acts, must of necessity be voted for at the times

specified in the section referred to. I see no more need of this act to fix the time for electing this special officer in the county of York than for an act to fix the time for the election of the regular officers, and therefore withhold my approval.

HENRY M. HOYT.

No. 2.

AN ACT

To prohibit the running at large of cattle, horses, mules, sheep, goats, and hogs in several townships of the county of Lackawanna.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That from and after the third Tuesday in July, Anno Domini one thousand eight hundred and seventy-nine, it shall not be lawful for the owner or owners, or any person or persons, having charge or control of any cattle, horses, mules, sheep, goats, or hogs, to suffer or permit the same or any one thereof to run at large in the townships of North Abington, South Abington, Benton, Newton, Ransom, Scott, Greenfield, Roaring Brook, and Madison, in the county of Lackawanna, and any owner or owners, person or persons, as aforesaid, who shall suffer or permit any one of the animals above named to so run at large, shall forfeit and pay a penalty of one dollar for each head of cattle, horses, or mules, and twenty-five cents for each sheep, goat, or hog, so suffered or permitted to run at large, to be recovered in the name of the Commonwealth, in the same manner as debts of like amount are now by law recoverable.

HENRY M. LONG,
Speaker of the House of Representatives.
CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 10, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, House bill No. 180, entitled "An act to prohibit the running at large of cattle, horses, mules, sheep, goats, and hogs in several townships of the county of Lackawanna."

This act violates the seventh section of the third article of the Constitution, which forbids special legislation by the General Assembly, regulating the affairs of townships. A general law forbidding the running at large of domestic animals would meet with my approval. For the reason stated, I withhold my assent to this bill.

HENRY M. HOYT.

No. 3.

AN ACT

To repeal that part referring to Clearfield county of the act of April eighth, Anno Domini one thousand eight hundred and seventy-three, entitled "An act in reference to the pay of surveyors as witnesses in Clearfield and Centre counties," and to fix the pay of surveyors as witnesses in Clearfield county at two dollars and fifty cents a day.

SECTION 1. Be it enacted by the Senate and House of Representatives of

the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the act approved the eighth day of April, Anno Domini one thousand eight hundred and seventy-three, entitled "An act in reference to the pay of surveyors as witnesses in Clearfield and Centre counties," be and the same is hereby repealed so far as the same refers to Clearfield county.

SECTION 2. That from and after the passage of this act, professional surveyors attending as witnesses to testify as surveyors in the several courts of Clearfield county, shall be entitled to receive two dollars and fifty cents for each day's attendance therein, and the same mileage as other witnesses.

A. J. HERR,

President pro tem. of the Senate.

HENRY M. LONG,

Speaker of the House of Representatives.

EXECUTIVE CHAMBER,

HARRISBURG, June 10, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, Senate bill No. 183, entitled "An act to repeal that part referring to Clearfield county of the act of April eighth, Anno Domini one thousand eight hundred and seventy-three, entitled 'An act in reference to the pay of surveyors as witnesses in Clearfield and Centre counties, and to fix the pay of surveyors as witnesses in Clearfield county at two dollars and fifty cents a day.'"

I am of the opinion that this act conflicts with the seventh section of the third article of the Constitution, which prohibits special legislation regulating the affairs of counties. No sufficient reason is known why the fees of surveyors, when serving as witnesses, should not be uniform throughout the State.

HENRY M. HOYT.

No. 4.

AN ACT

To prevent cattle, horses, mules, sheep, and hogs, from running at large in the township of West Donegal, in Lancaster county.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That from and after the passage of this act, it shall not be lawful for the owner or owners or any person having charge or control of any cattle, horses, mules, sheep, goats, or hogs, to suffer or permit the same or any one thereof to run at large in the township of West Donegal, Lancaster county, and any owner or owners, person or persons, who shall suffer or permit any one of the animals above named, to so run at large, shall forfeit and pay a penalty of one dollar for each head of cattle, horses, or mules, and twenty-five cents for each sheep, goat, or hog, so suffered or permitted to run at large, to be recovered in the name of the Commonwealth, in the same manner as debts of like amount are now by law recoverable.*

HENRY M. LONG,

Speaker of the House of Representatives.

A. J. HERR,

President pro tem. of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 10, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, House bill No. 315, entitled "An act to prevent cattle, horses, mules, sheep, and hogs, from running at large in the township of West Donegal, in Lancaster county."

Such legislation is prohibited by the seventh section of the third article of the Constitution, which provides that the General Assembly shall not pass any special or local law, regulating the affairs of counties, cities, townships, wards, boroughs, or school districts. This act being clearly within the prohibition, I am constrained to withhold my approval.

HENRY M. HOYT.

No. 5.

AN ACT

To authorize the town council of the borough of Bellefonte to purchase or acquire lands, tenements, water power, rights of way, or privileges to erect additional water works for said borough.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the town council of the borough of Bellefonte, and their successors in office, are hereby authorized and empowered to lease or purchase, or to take by appropriation, any lands or tenements, or water power, or rights of way, or privileges which may be necessary or proper for the erection of additional water works, or for the purpose of extending or enlarging the present water works of said borough, so as to be enabled to furnish a supply of water adequate to the wants of the inhabitants of said borough, and shall have power to operate and maintain the same : *Provided, however,* That the title to any lands or tenements, water power, rights of way, or privileges acquired by lease, purchase, or appropriation, in pursuance of this act, shall be invested in said borough in its corporate capacity.

SECTION 2. That if said town council cannot agree with the owner or owners for the purchase of any lands or tenements, water power, rights of way, or privileges, which may be necessary or proper in their judgment for the erection of additional water works for said borough, or for the extension or enlargement of the present water works thereof, and for the operation and maintenance of such additional water works the said town council shall have the right to take and appropriate the same in the following manner, to wit : They shall prepare a plot and description of the land or tenements they desire to appropriate, or through or in which they desire any rights or privileges ; also, a description of any water power they may desire to appropriate, and shall present a petition signed, by the said town council, or a majority of them, accompanied by said plot and description, to the court of common pleas of Centre county, setting forth particularly the lands or tenements, water power, or rights and privileges desired, and their inability to agree with the owner or owners for the same, whereupon, the said court shall appoint three discreet and disinterested freeholders viewers, who, after having given five days' notice of the time and place of the said view to said owner or owners, and being first duly sworn to perform the duties of their appointment faithfully and impartially, shall view the premises, hear the proofs and allegations of the parties, and make their

report to the next term of said court, stating the value of the lands, water powers, rights, or privileges appropriated, or damages to be paid said owner or owners; if either party shall be dissatisfied with said report, they may, within four days after the same shall have been presented to said court and approved, file exceptions thereto, and said court shall have power to hear testimony, modify or confirm said report, as they may deem right and just, or to appoint new viewers to review the premises, who shall report in like manner as the original viewers, and the said court to have like power over their report. The final confirmation of a report by the court shall be conclusive upon all parties, and upon payment or tender of the value or damage allowed the title to said lands, water power, rights, or privileges so appropriated shall vest in said borough: *Provided, however,* That after a report has been made to court, if exceptions be filed by the owner or owners, the town council, upon giving bond or such other security, in the name of said borough and in such manner as said court may direct in double the amount of compensation allowed by the viewers, which shall be approved by the court, shall have the right to enter upon and take possession of said lands, water power, rights, or privileges without further delay.

SECTION 3. That the provisions of this act shall in no wise limit or abridge the powers and authority of the corporate officers of said borough to supply water for the inhabitants of said borough under the general borough laws of the Commonwealth.

HENRY M. LONG,
Speaker of the House of Representatives.
 CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
 HARRISBURG, June 12, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, House bill No. 436, entitled "An act to authorize the town council of the borough of Bellefonte to purchase or acquire lands, tenements, water power, rights of way or privileges to erect additional water works for said borough."

Besides being a special act regulating the affairs of a single borough, and as such, in conflict with seventh section of the third article of the Constitution, this act is open to the fatal objection that by its terms the report of viewers appointed to assess damage for property taken for public use is made, when confirmed by the court, final and conclusive. Section eight of article sixteen of the Constitution, absolutely prohibits the General Assembly from depriving any person of an appeal and trial by jury according to the course of the common law when demanded. Clearly this act contravenes these salutary provisions of the fundamental law. I therefore withhold my approval.

HENRY M. HOYT.

No. 6.

AN ACT

Authorizing the burgess and town council of the several boroughs of this Commonwealth to construct sewers in any street, lane, or alleys therein, and to assess and collect the cost and expense thereof.

SECTION 1. *Be it enacted by the Senate and House of Representatives of*

the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That when a petition, signed by a majority of the property holders on any street, lane, or alley, or any part thereof, within the corporate limits of any borough within this Commonwealth, shall be presented to the councils thereof, praying for the construction of a sewer in said street, lane, or alley, or any part thereof, which is or may be hereafter laid out and opened in said borough, said council shall pass an ordinance stipulating the length, width, and depth of said sewer and the materials out of which the same shall be constructed, and shall also in said ordinance direct the burgess to advertise for proposals for the construction of and furnish materials for the same, and, under the direction of the committee on street, to contract with the lowest and best bidder for the performance of the excavation and construction of said sewer and the furnishing of the materials necessary thereto; and when said work shall be done satisfactory to said street committee and burgess they shall report the same to the council, and when approved by them it shall be accepted finally of the contractor; and for the payment of the costs of the same the said council are hereby authorized to levy and assess a special tax upon the property benefited thereby. Said levy shall be made by such persons, not less than three nor more than five in number, as the said council shall deem equitable, and make their report thereof in writing, containing the description of the real estate upon which said assessment is made, the amount assessed thereon, and the full name or names of the owner or owners thereof to said councils, within thirty days from the time of their appointment, and for which services they shall have the sum of two dollars for each and every day actually employed in said assessment, and when said assessment shall be approved by the councils of said borough the same shall be a lien on the real estate so levied upon, and if not paid within thirty days after said approval and due notice thereof having been given said owner or owners of said real estate, then the said sums or amounts so assessed with five per centum added shall be placed in the hands of the proper officer for collection, with interest thereon: *Provided, however,* That any person feeling aggrieved by reason of said assessment, shall have the privilege of appeal to the court of quarter sessions of the county in which said borough may be located, within twenty days after the receipt of the notice of the assessment. The court then shall have power to appoint other appraisers, if said appeal is sustained, who shall report an assessment of said property within a reasonable time fixed by the court, which report shall be final and conclusive.

SECTION 2. That for the collection of assessments made on property for work done under the foregoing section of this act, the solicitor is hereby authorized to file a lien or liens in the corporate name of said borough in the court of common pleas in and for said county, in the same manner as mechanics' liens are filed, and writs of *scire facias* and *levari facias* may be issued thereon, as in cases of mechanics' liens, and prosecuted to judgment and sale of said property for the collections of said assessment in the same manner, and the costs shall be taxed.

SECTION 3. All laws or parts of laws inconsistent herewith be and the same are hereby repealed.

HENRY M. LONG,
Speaker of the House of Representatives.
CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 12, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, House bill No. 156, entitled "An act authorizing the burgess and town council of the several boroughs of this Commonwealth to construct sewers in any street, lane, or alleys therein, and to assess and collect the cost and expense thereof."

While the general object of the bill is unobjectionable, I am of the opinion that a fatal defect is to be found in the provision which renders the finding of appraisers appointed by the courts of quarter sessions, as to the amount of damages to be assessed and paid by property holders after the construction of sewers, final and conclusive. The eighth section of the sixteenth article of the Constitution not only unmistakably denies to the General Assembly the right to deprive any person of an appeal from any preliminary appraisement, but also secures the right of a trial by jury, according to the course of common law, whenever demanded by any person injured by the extension of public works. If the constitutional provision as to the right of appeal is satisfied by the appeal given from the award of the appraisers appointed by councils, the right to a jury trial still remains, which is not satisfied by the privilege of contesting on the *scire facias*, because, if the act is valid, the provision making the award of appraisers appointed by the court final and conclusive would, in the absence of any other rule of law, preclude the possibility of a defense on the merits, as to the amount of the claim. Because, clearly in violation of the provisions of the Constitution, I withhold my approval of this bill.

HENRY M. HOYT.

No. 7.

AN ACT

Relating to the assessment and payment of road damages in the boroughs of Berks county.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the act of Assembly, approved April twenty-second, one thousand eight hundred and fifty-six, entitled "A supplement to the act regulating boroughs, approved April third, one thousand eight hundred and fifty-one; and also, the last proviso to the third article of the twenty-seventh section of the act entitled 'An act regulating boroughs,' approved April third, one thousand eight hundred and fifty-one, and the proviso to the fifth article of the said twenty-seventh section of the said last mentioned act, be and the same are hereby repealed, so far as it relates to the boroughs now incorporated or hereafter to be incorporated in the county of Berks, and like proceedings shall be had for the opening, widening, and straightening of the roads, streets, lanes, courts, and alleys laid out and ordained in the said boroughs in Berks county, and for the assessment and payment of the damages sustained thereby, as are provided by law for the laying out and opening, and the assessment and payment of damages sustained thereby, of public roads within the said county of Berks outside of said boroughs."

HENRY M. LONG,
Speaker of the House of Representatives.
CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 12, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, House bill No. 109, entitled "An act relating to the assessment and payment of road damages in the boroughs of Berks county."

This action is open to objection : *First.* Because it is a local and special act regulating the affairs of the boroughs of a single county.

Secondly. Because it is a repeal of general laws indirectly enacting local and special laws.

Thirdly. Because it extends and confers the special road laws of Berks county to the boroughs in said county without reënacting and publishing them at length.

Fourthly. Because it is a special act authorizing the laying out and opening of roads, streets, and alleys, all of which is a violation of the sixth and seventh sections of the third article of the Constitution. I therefore withhold my approval.

HENRY M. HOYT.

No. 8.

A SUPPLEMENT

To an act entitled "An act relative to the prison of Northumberland county," approved the fourth day of April, eighteen hundred and seventy-eight, amending and extending the seventh section of said act.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the seventh section of an act entitled "An act relative to the prison of Northumberland county," approved April fourth, eighteen hundred and seventy-eight, which is as follows: "That the county commissioners of Northumberland county shall be and they are hereby authorized to discharge from prison, without the delay and expense of any proceeding under the insolvent laws of this Commonwealth, every convict who shall have served out his or her term of imprisonment, notwithstanding such convict shall not have paid the costs of prosecution, fine, or made restitution or paid the value of stolen property: *Provided*, That in the opinion of said commissioners such convict is unable to pay or restore the same: *And provided further*, That such discharge shall not prevent the Commonwealth, or any person interested in such payment or restitution, from proceeding by action to recover the same from the property of said convict; but no such convict shall be so discharged until he or she shall have made, under oath or affirmation, duplicate schedules of all his or her property—real, personal, or mixed—so far as he or she can ascertain the same, one of which shall be filed among the papers of said prison, and the other delivered to the clerk of the proper court, to be filed among the other papers of the case: *Provided further*, That nothing in said proceeding shall either add to or take from the liability of said county for costs under existing laws of this Commonwealth," be and is hereby amended and extended so as to read as follows: That the county commissioners of Northumberland county shall be and they are hereby authorized to discharge from prison, without the delay and expense of any proceeding under the insolvent laws of this Commonwealth, every convict who shall have served out the term of his or her imprisonment, notwithstanding

standing such convict shall not have paid the costs of prosecution, fine, or made restitution, or paid the value of stolen property; and to discharge from the said prison any person who may not have been sentenced to a term of imprisonment or to pay a fine, but who may be sentenced or held for the payment of costs alone: *Provided*, That in the opinion of said commissioners such convict is unable to pay or restore the same, or pay the costs when sentenced, or held for payment of costs alone: *And provided*, That such discharge shall not prevent the Commonwealth, or any person interested in such payment or restitution, from proceeding by action to recover the same from the property of said convict; but no such convict shall be so discharged until he or she shall have made, under oath or affirmation, duplicate schedules of all his or her property—real, personal, or mixed—so far as she or he can ascertain the same, one of which shall be filed among the papers of said prison, and the other delivered to the clerk of the proper court to be filed among the other papers of the case: *Provided further*, That nothing in said proceeding shall either add to or take from the liability of said county for costs under existing laws of this Commonwealth.

A. J. HERR,

President pro tem. of the Senate.

HENRY M. LONG,

Speaker of the House of Representatives.

EXECUTIVE CHAMBER,
HARRISBURG, June 12, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, Senate bill No. 264, entitled "A supplement to an act entitled 'An act relative to the prison of Northumberland county,' approved the fourth day of April, eighteen hundred and seventy-eight, amending and extending the seventh section of said act."

Neither in the form of a supplement to an act already passed or in the form of an original bill has the General Assembly the power to enact special or local laws regulating the affairs of counties. Such legislation is expressly forbidden by the seventh section of the third article of the Constitution. This act is undoubtedly within the constitutional prohibition, and however useful and necessary it may be, the relief sought must be obtained through the medium of general legislation. For the reason stated, I am unable to approve this bill.

HENRY M. HOYT.

No. 9.

AN ACT

To prevent the appointment of persons to assess the shares of bank stock in this Commonwealth, and to provide for the assessment thereof and payment of the taxes thereon.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That from and after the passage of this act it shall not be lawful for the Auditor General or State Treasurer to appoint any person to assess the value of the shares of stock of any bank or saving institution in this Commonwealth, but during the month of January, in every year, it shall be the duty of the president or

cashier of every such bank and saving institution, the shares of which are taxable by any law of this Commonwealth, to report to the Auditor General and also to the commissioners of the city or county where such bank or saving institution is located, for the purpose of assessment by them on proper blanks, to be furnished by the Auditor General for that purpose, the number of shares of stock of such bank or saving institution held by each shareholder, and the residence of such shareholder, and, upon receiving such report, such commissioners, if they deem the same correct, shall, as soon as practicable, assess the legal and proper taxes thereon, and post up in their office, and also in the office of the bank or saving institution so assessed, a copy of such report, with the assessment of taxes thereon, and shall also forward to the State Treasurer a certified copy thereof, to be filed in his office. But if such commissioners shall be satisfied that report by any president or cashier of any bank or saving institution is incorrect in the number of shares or valuation thereof, the said commissioners shall correct the same before assessing the proper taxes thereon, as hereinbefore provided, and any shareholder dissatisfied with any such valuation or assessment, may enter his appeal therefrom according to law, within thirty days from the time such copy is posted in the office of such bank or saving institution.

SECTION 2. That it shall be the duty of the cashier of every bank and saving institution in this Commonwealth, whether incorporated under the laws thereof or under the laws of the United States, to collect annually from every shareholder thereof, all the taxes lawfully assessed upon the par value of the shares so held, and to pay so much thereof as is for the State into the State treasury, and such other taxes, if any, to the proper persons authorized to receive or collect the same, on or before the first day of July in every year, and the commissioners making such assessments shall be notified by the State Treasurer of all payments of such taxes into the State treasury for shareholders, and if such taxes are not paid in any year by the first of July, as hereinbefore provided, they shall be collected by the proper officer according to law, and this act shall not affect the lien of such taxes or the manner of collecting the same or any proceedings in violation thereof, except as herein provided.

CHARLES W. STONE,
President of the Senate.

HENRY M. LONG,
Speaker of the House of Representatives.

EXECUTIVE CHAMBER,
HARRISBURG, June 12, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, Senate bill No. 139, entitled "An act to prevent the appointment of persons to assess the shares of bank stock in this Commonwealth, and to provide for the assessment thereof and payment of the taxes thereon."

An attempt is made by this act to require of bank officers an annual statement for use as a basis of taxation. I am of the opinion that the act fails to reach its purpose, because the only information required of such officers is as to "the number of shares of stock of such bank or savings institution held by each shareholder, and the residence of such shareholder." No valuation, appraisement, or mention of par value of the shares is required, and therefore no basis of assessment or data from which the commissioners may assess or which they may rectify if dissatisfied.

The general revenue bill contains provision on the same subject, more

suitable to reach the desired end. Until some mode of enforcing a proper return by officers of national banks is devised, the office of bank assessor would seem to be a necessary adjunct in the system for levying and collecting State taxes from banks. For the reasons stated, I withhold my approval of the bill.

HENRY M. HOYT.

No. 10.

AN ACT

To protect game and prohibit trespassing upon inclosed, occupied, or improved lands in Westmoreland county in pursuit of game.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That hereafter it shall not be lawful for any person to hunt or pursue with dogs, ferrets, guns, or any other device, any game whatever, or to kill or destroy the same during any season of the year upon any enclosed, occupied, or improved lands in Westmoreland county, unless with the consent of the owner, occupant, or lessee of said lands.

SECTION 2. Any person violating the provisions of the foregoing section of this act shall be subject to a penalty of not less than five nor more than twenty-five dollars, to be imposed and recovered as hereinafter provided, in addition to any damages actually done or committed, the remedy for which shall remain as heretofore.

SECTION 3. Any justice of the peace in and for said county, upon information or complaint made before him by the owner, occupant, or lessee, on affidavit of any violation of this act, is hereby authorized and required to issue a warrant, in the name of the Commonwealth, against the person or persons charged in said information or complaint with the offense, directed to any constable to arrest and bring before him the person so offending, and thereupon the said justice shall proceed to hear and determine the guilt or innocence of the person so arrested and brought before him, and if he shall find the person so charged guilty of the offense aforesaid, he shall be sentenced to pay a fine of not less than five nor more than twenty-five dollars and the costs of prosecution, the said fine to be paid into the county treasury, and upon failure to pay said fine and costs forthwith, the person so convicted and fined shall be sentenced and committed to the county jail of said county for a period of not less than five nor more than twenty-five days, at the discretion of said justice, unless he shall enter into a recognizance, with sufficient security, to answer a charge of misdemeanor before the quarter sessions of the peace of the county in which the offense is committed, which court, on conviction of the offense so charged and failure to pay the penalty imposed by this act, with costs, shall commit said defendant to the common fail of said county for a period of not less than five nor more than twenty-five days.

CHARLES W. STONE,
President of the Senate.
HENRY M. LONG,
Speaker of the House of Representatives.

EXECUTIVE CHAMBER,
HARRISBURG, June 12, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, Senate bill No. 100, entitled "An act to protect game and prohibit trespassing upon enclosed, occupied, or improved lands in Westmoreland county in pursuit of game."

I am of the opinion that this act is a clear violation of the seventh section of the third article of the Constitution, which forbids the passage by the General Assembly of any local or special law regulating the affairs of counties. A general law on this subject would be unobjectionable; but this special act, I am obliged, for the reason stated, to disapprove.

HENRY M. HOYT.

No. 11.

AN ACT.

To secure to operatives and laborers engaged in and about coal mines and manufactures of iron and steel the payment of their wages at regular intervals, and in lawful money of the United States.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same.* That from and after the first day of September, one thousand eight hundred and seventy-nine, persons, firms, companies, corporations, or associations in this Commonwealth, engaged in mining coal, or mining and manufacturing it, or manufacturing iron or steel, or both, employing ten or more hands, shall pay their employés as provided in this act.

SECTION 2. All persons, firms, companies, corporations, or associations engaged in the business aforesaid shall settle with their employés at least once in each month, but the employés shall have the privilege to give orders for money or merchandise on his employers for such amounts as he may have earned and have to his credit from time to time during the month, and pay them the amounts due them for their work or services in lawful money of the United States, or the cash order, as described and required in section three of this act.

SECTION 3. That it shall not be lawful for any person, firm, company, corporation, or association, their clerk, agent, officer, or servant in this State to issue for payment of labor any order or other paper whatsoever, unless the same purports to be redeemable, for its face value, in lawful money of the United States, bearing interest at legal rate, made payable to employé or bearer, and redeemable within a period of thirty days by the person, firm, company, corporation, or association giving, making, or issuing the same; and any person, firm, company, corporation, or association engaged in the business aforesaid, their clerk, agents, officers, or servants, who shall issue for payment of labor any paper or order other than the one herein specified, in violation of this section, he, she, or they shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding five hundred dollars, in the discretion of the court.

SECTION 4. That from and after the passage of this act, it shall be unlawful for any person, firm, company, corporation, or association engaged in mining or manufacturing as aforesaid, and who shall likewise be engaged or interested, directly or indirectly, in merchandising, as owner or in the per centum of profit obtained from the sale of any such merchandise, to know-

ingly and willfully sell to any employé any merchandise whatsoever for a higher price than he sells the same article to other persons, and any person or member of any firm, company, corporation, or association, his or their clerk, agent, or servant who shall violate this section of this act, shall be deemed guilty of a misdemeanor, and for each offense, upon conviction, shall be fined in any sum not exceeding five hundred dollars, or undergo an imprisonment in the county jail for a period not exceeding six months, or both or either, in the discretion of the court.

SECTION 5. That if any person, firm, company, corporation, or association shall refuse or neglect to pay any of their said employés at the intervals of time as aforesaid, or shall neglect or refuse to redeem any of the cash orders herein provided for within the time specified, if presented, and suit should be brought for the amount overdue or unpaid, judgment for the amount of said claim proven to be due and unpaid, and a penalty of five per centum of such amount additional for each and every month's delay shall be rendered in favor of the plaintiff in such action: *Provided*, That nothing in this act shall interfere with any previous contract between the employers and the employés.

SECTION 6. All laws or parts of laws inconsistent with the provisions of this act be and the same are hereby repealed.

CHARLES W. STONE,
President of the Senate.

HENRY M LONG,
Speaker of the House of Representatives.

EXECUTIVE CHAMBER,
HARRISBURG, June 12, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, Senate bill No. 49, entitled "An act to secure to operatives and laborers engaged in and about coal mines and manufactories of iron and steel, the payment of their wages at regular intervals and in lawful money of the United States."

By the seventh section of the third article of the Constitution the General Assembly is prohibited from passing any local or special law, regulating labor, trade, mining, or manufacturing. This act applies only to operatives and laborers engaged in and about certain coal mines and manufactories of iron. It attempts to regulate the dealings between employers and employés in the kinds of trade and manufacturing named. Operations where less than ten men are employed, are excepted from its provisions, and it is therefore a special act and within the constitutional prohibition. If a law of this character would be advantageous to persons employed in the large coal and iron industries of the State, it would be no less desirable for those employed in the smaller operations and to the greatly larger number engaged in other branches of manufacturing and mining who are excluded from its benefit.

No valid reason can be assigned for making a distinction between a minor or laborer employed in a coal mine and one employed in an ore mine, or between a workman in an iron-mill and a workman in a lumber-mill or glass works. To guard against unjust and unreasonable discrimination, and to distribute as equally and fairly as possible among the people of the State the benefits of legislation through the medium of general laws, was the chief intent of the framers of the Constitution. Special immunities and privileges cannot be conferred by special acts in the large class of cases named in the seventh section of the third article—either upon employers or employés, or any one else.

I am further of the opinion that if this act were general in its operation it would still be open to valid objection, as being contrary to the genius of our free government, and as based upon a theory subversive of the true principle of our institutions. Among the general great and essential principles of liberty and free government, as recognized and unalterably established by the declaration of rights, is the right of every free-born and independent man "to acquire, possess, and protect property and pursue his own happiness." For the full enjoyment of this right the laborer must be allowed to sell his labor to whom and for such price and on such terms as seems good to him, without molestation, hindrance, or restriction. If the General Assembly, controlled by some adverse interest, should be brought to declare that the rate of wages should be a penny for a day's work, and should further prescribe the diet and clothing of the laboring man, no doubt would be entertained as to the glaring unconstitutionality of such a law; but the principle underlying this act, if recognized and carried to its logical conclusion, would authorize an act regulating the day's wages and the workman's diet whenever a Legislature could be found to pass it. The true governmental function is to secure to each individual citizen the largest share of personal freedom in every relation of life consistent with the preservation of organized society. No form of government such as ours can or ought to undertake the task of supervising the business or private economical relations of the individual citizen. When all are equal before the law, each ought to rely on himself for subsistence and success. When to each citizen is secured the right to go and come, to work or be idle, to contract with whomsoever he will, and also absolute security from encroachment by others on his fundamental rights, government will have answered the purpose of its creation, and can properly attempt nothing further. Only when men have been disabled by disease or accident, or have lost their reason, and thus become objects of public charity, appealing to the humanity and kindly sympathies of their fellows, and willing to surrender themselves to public control, ought public provision to be made for their necessities.

This bill, in my judgment, interferes with the free employment of capital, arbitrarily controls trade, substitutes legislation for the laws of supply and demand, and is the beginning of a system of paternal government, at variance with our political institutions, which has always proved, when tried, injurious alike to the employed as well as the employer.

Believing it to be not only in conflict with the Constitution, but also contrary to public policy and the true theory of free government, I am compelled to withhold my approval.

HENRY M. HOYT.

No. 12.

AN ACT

To repeal an act entitled "An act supplementary to the act consolidating the city of Philadelphia, relating to the cleaning of streets of said city," approved March eighteen, one thousand eight hundred and sixty-nine.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the act entitled "An act supplementary to the act consolidating the city of Philadelphia, relating to

the cleaning of streets of said city,' approved March eighteen, one thousand eight hundred and sixty-nine," be and the same is hereby repealed

CHARLES W. STONE,
President of the Senate.

HENRY M. LONG,
Speaker of the House of Representatives.

EXECUTIVE CHAMBER,
HARRISBURG, June 28, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, Senate bill No. 156, entitled "An act to repeal an act entitled 'An act supplementary to the act consolidating the city of Philadelphia, relating to the cleaning of streets of said city,' approved March eighteen, one thousand eight hundred and sixty-nine."

The act which this bill proposes to repeal, vested in the board of health of the city of Philadelphia all the powers formerly vested in the select and common councils, in the mayor and board of select and common council, and in the highway department of that city, relating to the cleaning of streets, markets, and public highways of said city, and the removal of ashes, garbage, refuse, and dead animals from the same.

It directed the board of health to advertise for proposals for performing this work; compelled all proposals to be accompanied with specifications showing how often and in what manner the proposed work is to be done, and required each one to be opened at the time, and place fixed in the advertisements in the presence of the finance committee of said city, and of a majority of the board of health. The contract was to be awarded to the lowest and best bidder, and was made subject to the approval of a majority of both the finance committee and of the board of health.

The repeal of this act will revive the act of Assembly approved the fourth day of April, one thousand eight hundred and sixty-six, entitled "A further supplement to an act to incorporate the city of Philadelphia, approved February second, one thousand eight hundred and fifty-four, relative to street cleaning."

This act empowers the select and common councils of that city, "without previous estimates or advertisements for proposals, to authorize the mayor of said city to make and execute a contract or contracts with such party or parties, and on such terms and conditions as they may designate, for cleaning and keeping clean the said city for any period not exceeding five years, and that the select and common councils shall have full power and authority to adopt all necessary measures in relation thereto."

The control of the streets and highways of a city ought properly to be trusted to its councils, but with suitable restrictions upon their action. Before the act of one thousand eight hundred and sixty-nine is repealed there ought to be some provision requiring the same care which it exacts to be taken by the councils to have the work of cleaning the public ways of that city performed most thoroughly and with the least expense to the citizens.

The present system is represented to me to be satisfactory in its operation, and under the supervision of the finance committee to be more economical and effective than any earlier system for the same purpose, and I therefore believe it to be my duty to give the citizens of Philadelphia the repose they ask from this additional legislation.

HENRY M. HOYT.

No. 13.
AN ACT

Relating to finance, taxes, and taxation in cities of the second class.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the councils shall have the exclusive power to appropriate money for every object of city expenditure. They shall be invested with all the powers in relation to the appropriation and raising of moneys now possessed by any branch or department of the city government.

SECTION 2. No such city shall have power to borrow any money whatever, except as herein provided.

SECTION 3. In case of a casualty occurring after the annual appropriation ordinance is passed which necessarily requires an extraordinary expenditure, councils may, by ordinance passed by a vote of three fourths of the members elected to each House, authorize and direct the finance committee to borrow on behalf of the city the amount required for a period not beyond the close of the next fiscal year, and shall, in the same ordinance, levy a tax sufficient to pay the loan with interest, which tax shall be embraced in the amount to be raised in the next annual tax levy, and collected therewith.

SECTION 4. No part of any appropriation shall be transferred to the credit of any other account, and should a balance remain at the end of the fiscal year, such balance shall be converted into the treasury.

SECTION 5. The councils of every such city shall have power to levy and collect taxes for municipal purposes annually on all subjects now taxable for State and county purposes, and to levy and collect water rents where water is supplied by the city, and to levy and collect a business tax on the amount of all sales within the city during the year, and issue licenses to all parties doing business in the city. They shall have power in levying taxes to make an equitable allowance in favor of suburban, rural, and agricultural properties.

SECTION 6. The annual tax rate shall be ascertained and declared as follows:

I. The assessed value of all property taxable for city purposes shall be set forth by wards and aggregated in the appropriation ordinance.

II. The appropriations shall be set forth in detail and aggregated.

III. From the gross amount of appropriations there shall be deducted the estimated receipts from all sources other than direct taxation of property, as well as all special, local, or ward taxation, which estimate shall be based on the actual receipts from the same sources of the year preceding where such sources existed, subtracting ten per centum therefrom, and shall include the estimated amount from any new source of receipts.

IV. When the whole amount of revenue for all purposes to be raised by direct taxation, including ten per centum to be added thereto for contingencies, shall have been so ascertained, it shall be divided by the amount of the aggregated assessments of taxable property, and the result shall be the tax rate levied for the ensuing year.

V. The percentage deducted from the sources of revenue other than direct taxation or added to the amount to be raised by the annual tax levy for contingencies may be increased by councils, upon the recommendation of the department of finance.

VI. The fund derived from the ten per centum estimated for contingencies shall be first applied to meet deficiencies in collections and afterwards to

special appropriations for unforeseen necessities, and should a balance remain at the end of the fiscal year, the same shall be converted into the treasury.

VII. In cities where there is a district or ward tax or indebtedness, the tax for the district or ward shall be ascertained by substituting the district or ward assessment and the district or ward appropriations in like manner.

VIII. Should the quotient in the division herein provided contain the fraction of a mill, such fraction shall be made a whole mill, and the tax rate increased accordingly.

IX. This section shall not apply to any special tax which is or may be levied in pursuance of a decree of court heretofore made, but the same shall continue to be levied in pursuance of such decree.

X. In cities where an allowance is made for suburban, rural, or agricultural properties such allowance shall be made in the valuation of such properties before the tax rate is levied.

SECTION 7. In order that the finances of cities or any sub division thereof may not be deranged by existing debts the councils are authorized to fund so much thereof as they may deem advisable and to issue bonds therefor, payable within thirty years, at a rate of interest not exceeding six per centum per annum, and to provide for the payment of the same in the manner required by law. The bonds issued therefor shall be placed under the control of the finance committee, whose duty it shall be to sell the same at not less than par, and apply the proceeds to the payment of the existing indebtedness in such manner as may be directed by councils.

SECTION 8. That whenever in any city of the second class liens have been or may be filed for taxes or water rents levied prior to the passage of the act entitled "An act in relation to cities of the second class providing for the levy, collection, and disbursement of taxes and water rents," approved the twenty-second day of March, Anno Domini one thousand eight hundred and seventy-seven, and the same remain unpaid, the councils of any such city be and they are hereby authorized by resolution to direct the collector of delinquent taxes to procure and file accurate description of the several properties against which such liens have been or may be filed, and to proceed to sell the real estate under the provision of and in the manner provided in said act, and without limitation as to the amount of taxes for which any particular property might be sold, and with the same force and effect as though such taxes or water rent had accrued and the liens been filed under the provisions of the act aforesaid.

SECTION 9. Proceedings upon liens filed for taxes and water rents shall be by *scire facias*, as in the case of municipal liens and judgments may be entered by default therein, unless the defendant should file his affidavit of defense as required in cases where plaintiff has filed his copy of the cause of action with the *præcipe* and judgment, and execution in such proceedings shall be with like effect as in cases of municipal liens, the amount stated by the collector of delinquent taxes in filing said liens to be due for taxes and water rents shall be *prima facia* evidence of the actual amount thereof, and that the same is due and owing.

SECTION 10. The said act of March twenty-second, one thousand eight hundred and seventy-seven, as well as this act, shall not be construed as in any way affecting the fees or commissions which the city treasurers of cities of the second class were entitled at the time of their election to such office for the term for which such treasurers shall have been elected, upon any taxes levied for school, poor, or other purposes previous to their consolidation with the city government as departments thereof, but upon all taxes

levied for such purposes the treasurers shall be entitled to receive the same commissions or fees as if the same had been levied by separate corporations previous to the passage of the said act of March twenty-second, one thousand eight hundred and seventy-seven.

SECTION 11. The money of the city shall remain in the treasury until paid out on warrant, and no department shall have any other treasurer than the city treasurer: *And provided further,* That no money shall be paid out of the city treasury except upon appropriations made by law, and on warrant drawn by the proper officers thereof.

SECTION 12. That the provisions of this act relating to the transfers of appropriations shall not apply to any appropriation for the year one thousand eight hundred and seventy nine.

HENRY M. LONG,
Speaker of the House of Representatives.

CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 30, 1879.

I herewith file in the office of the Secretary of the Commonwealth, with my objections thereto, House bill No. 250, entitled "An act relating to finance, taxes, and taxation in cities of the second class."

This bill contains enactments of much wider scope than its title indicates, and is, in my judgment, objectionable for these reasons:

1. It gives to the councils of cities of the second class "power to levy and collect taxes for municipal purposes," and enables them to abolish the existing system of levying and collecting taxes which is now in successful operation, and to substitute a new and different one.

2. It makes a radical change in the present method of the classification of property for the purpose of taxation as "city, rural, and agricultural property," and permits "an equitable allowance in favor of suburban, rural, or agricultural property." Although the true rule of taxation, in my judgment, is to make the adjustment and equalization in the valuation of property and not in the rate of taxation, the bill fails to provide the necessary and proper machinery to carry this method into effect.

3. It destroys the independence of the school board, and to a large extent places it under the control of the city councils. The policy of the common school system of this Commonwealth has been to keep it separate from all other municipal departments; to give it power to levy and collect its own taxes; to keep and appropriate its own funds, and to manage its own affairs in its own way with entire freedom from all responsibility except to the citizens. The experience of the Commonwealth has proven the wisdom of this policy. This bill now proposes to change it, and to lodge in the hands of city councils the sole power to determine and collect the amount of money they may think necessary for school purposes, and to make the city treasurer the custodian of the fund. This dependence upon the city councils would deprive the school board of discretion in the employment of teachers, the maintenance and extension of school facilities, and the management of its pecuniary affairs, and for it substitutes the opinion and direction of city councils. It will lessen, if not entirely destroy, the responsibility of the board to the citizens by making it directly responsible to the councils and not to them for the manner and amount of its disbursements. It will, in course of time, introduce political considerations into the management of school matters, subject our popular system of educa-

tion to political influence, and perhaps awaken partisan opposition. The present administration of the school board of the cities of the second class has been represented to me to be honest, economical, and efficient, and I am informed that no friend of education desires to have it changed.

4. The purport of the entire bill is by no means evident. Some of its provisions are capable of varied constructions, and may lead to vicious results. The only valuable feature it contains is the provision it makes for the collection of delinquent taxes levied prior to the passage of the act of 22d day of March, 1877. But their collection can better be suspended than have it made the means of introducing this kind of legislation. All the other objects of this bill can be better obtained under existing laws, and when other methods are sought they ought to be accompanied with a detailed mode of reaching them.

Believing the bill to be impolitic, tending to confusion in city government, destructive to the best interests of the common school system, defective in the method it provides for "finance, taxes, and taxation," and unneeded by the citizens of cities of the second class, who have hardly had time to understand and apply the legislation so recently given them, I am compelled to disapprove it.

HENRY M. HOYT.

No. 1.

AN ACT

Designating the judicial districts of the Commonwealth, and providing for the appointment and election of judges therein, for issuing to additional judges learned in the law commissions as president judges, and manner of fixing the terms of court therein.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the judicial districts of the Commonwealth shall be numbered, composed, and designated as follows:

The First district shall be composed of the city and county of Philadelphia, and shall have twelve judges learned in the law in the common pleas, and three judges learned in the law in the orphans' court.

The Second district, of the county of Lancaster, and shall have two judges learned in the law.

The Third district, of the county of Northampton, and shall have two judges learned in the law.

The Fourth district, of the county of Tioga, to which the county of Potter is hereby attached, and shall have one judge learned in the law.

The Fifth district, of the county of Allegheny, and shall have six judges learned in the law in the common pleas, and two judges learned in the law in the orphans' court.

The Sixth district, of the county of Erie, and shall have two judges learned in the law.

The Seventh district, of the county of Bucks, and shall have one judge learned in the law.

The Eighth district, of the county of Northumberland, and shall have one judge learned in the law.

The Ninth district, of the county of Cumberland, and shall have one judge learned in the law.

The Tenth district, of the county of Westmoreland, and shall have one judge learned in the law.

The Eleventh district, of the county of Luzerne, and shall have two judges learned in the law in the common pleas, and one judge learned in the law in the orphans' court.

The Twelfth district, of the county of Dauphin, and shall have two judges learned in the law.

The Thirteenth district, of the county of Bradford, and shall have one judge learned in the law.

The Fourteenth district, of the county of Fayette, and shall have one judge learned in the law.

The Fifteenth district, of the county of Chester, and shall have one judge learned in the law.

The Sixteenth district, of the counties of Bedford and Somerset, and shall have one judge learned in the law.

The Seventeenth district, of the county of Lawrence, and shall have one judge learned in the law.

The Eighteenth district, of the county of Jefferson, and shall have one judge learned in the law.

The Nineteenth district, of the county of York, and shall have two judges learned in the law.

The Twentieth district, of the counties of Union, Snyder, and Juniata, and shall have one judge learned in the law.

The Twenty-first district, of the county of Schuylkill, and shall have three judges learned in the law.

The Twenty-second district, of the counties of Wayne and Pike, and shall have one judge learned in the law.

The Twenty-third district, of the county of Berks, and shall have two judges learned in the law.

The Twenty-fourth district, of the county of Blair, and shall have one judge learned in the law.

The Twenty-fifth district, of the counties of Clinton, Cameron, and Elk, and shall have one judge learned in the law.

The Twenty-sixth district, of the counties of Columbia and Montour, and shall have one judge learned in the law.

The Twenty-seventh district, of the county of Washington, and shall have one judge learned in the law.

The Twenty-eighth district, of the county of Venango, and shall have one judge learned in the law.

The Twenty-ninth district, of the county of Lycoming, and shall have one judge learned in the law.

The Thirtieth district, of the county of Crawford, and shall have two judges learned in the law.

The Thirty-first district, of the county of Lehigh, and shall have one judge learned in the law.

The Thirty second district, of the county of Delaware, and shall have one judge learned in the law.

The Thirty-third district, of the county of Armstrong, and shall have one judge learned in the law.

The Thirty-fourth district, of the county of Susquehanna, and shall have one judge learned in the law.

The Thirty-fifth district, of the county of Mercer, and shall have one judge learned in the law.

The Thirty-sixth district, of the county of Beaver, and shall have one judge learned in the law.

The Thirty-seventh district, of the counties of Warren and Forest, and shall have one judge learned in the law.

The Thirty-eighth district, of the county of Montgomery, and shall have one judge learned in the law.

The Thirty-ninth district, of the county of Franklin, and shall have one judge learned in the law.

The Fortieth district, of the county of Indiana, and shall have one judge learned in the law.

The Forty-first district, of the counties of Huntingdon and Perry, and shall have one judge learned in the law.

The Forty-second district, of the counties of Adams and Fulton, and shall have one judge learned in the law, and the Honorable William McClean, the president judge of Adams county, shall be the president judge of said district until his commission expires.

The Forty-third district, of the counties of Carbon and Monroe, and shall have one judge learned in the law.

The Forty-fourth district, of the counties of Wyoming and Sullivan, and shall have one judge learned in the law.

The Forty-fifth district, of the county of Lackawanna, and shall have two judges learned in the law.

The Forty-sixth district, of the county of Clearfield, and shall have one judge learned in the law.

The Forty-seventh district, of the county of Cambria, and shall have one judge learned in the law.

The Forty-eighth district, of the county of McKean, and shall have one judge learned in the law, and the additional law judge of the Fourth district, as constituted under the act of one thousand eight hundred and seventy-four, and now residing in Tioga county, shall be the president judge thereof until the expiration of his commission.

The Forty-ninth district, of the county of Lebanon, and shall have one judge learned in the law.

The Fiftieth district, of the counties of Centre and Mifflin, and shall have one judge learned in the law, and the additional law judge of the Twenty-fifth judicial district, as constituted under the act of one thousand eight hundred and seventy-four, and now residing in Centre county, shall be the president judge thereof until the expiration of his commission.

The Fifty-first district, of the county of Butler, and shall have one judge learned in the law.

The Fifty-second district, of the county of Greene, and shall have one judge learned in the law.

The Fifty-third district, of the county of Clarion, and shall have one judge learned in the law.

SECTION 2. That the qualified electors of the county of Dauphin, constituting the Twelfth district, and the qualified electors of the county of Northampton, constituting the Third district, and the qualified electors of the county of Erie, constituting the Sixth district, shall at the next general election, in the manner prescribed by law for the election of president judges, elect one person learned in the law to serve as an additional judge of the several courts of said district; and the qualified electors of any county constituting a separate judicial district, excepting in the Fourth, Seventeenth, and Twenty-fifth districts, where under the Constitution or laws of this Commonwealth an additional law judge or judges learned in the law have heretofore been elected or commissioned, shall at the general election next preceding the expiration of the term of office of such additional law judge or additional law judges or judges learned in the law in the manner provided for the election of president judge of said district, elect a successor or successors in office for such district, said additional judges shall possess the same qualifications which are required by the Constitution and laws for president judge, and shall be commissioned by the Governor, and hold their offices by the same tenor as other judges of courts of record required to be learned in the law. The said additional judges shall have the same power, authority, and jurisdiction in the several courts of their said districts respectively, and be subject to the same duties, provisions, and penalties as the president judges thereof, and receive the same compensation for their services, to be paid out of the State treasury in quarterly payments, in the same manner as the salaries of president judges are now paid; that the said additional judges shall have the same power and authority to hold special or adjourned courts in their own or other districts as president judges have by existing laws.

SECTION 3. That the additional law judge herein provided for the Twelfth judicial district is in place of and successor to the additional law judge provided for and now serving under the provisions of the act approved the ninth day of April, one thousand eight hundred and seventy-four, providing for an additional law judge for said district.

SECTION 4. That the election for judges shall be held and conducted in

the several election districts in the same manner in all respects as election for representatives are or shall be held and conducted, and by the same judges, inspectors, and other officers under the provisions of existing laws regulating elections in this Commonwealth.

SECTION 5. That duplicate returns of all the votes given in each county for judges of the Supreme Court and all judges which the qualified electors of such county are entitled to elect of themselves unconnected with any other county or district shall be made out by the prothonotary of the court of common pleas of such county, under direction of said court, at their meeting to receive and compute the returns of the preceding election, agreeably to the provisions of the thirteenth section of the act entitled "A further supplement to the act regulating elections in this Commonwealth, approved January thirtieth, one thousand eight hundred and seventy-four," one of which returns shall be filed and entered on record in the office of the prothonotary of such court, and the other return such prothonotary shall enclose in a sealed envelope, and direct and immediately mail to the Secretary of the Commonwealth.

SECTION 6. That in case of the election of a president judge in any judicial district composed of two or more counties on the day of the sitting of the court, or other person authorized by law to receive and compute returns, in each of such counties, the prothonotary of the court opens, and in their presence, shall make out a return of all the votes which shall be given at such election within the county for every person voted for as such president judge, which shall be properly attested by the seal of said court and the said court or persons receiving and computing returns shall thereupon appoint one of the judges of election in said county to take charge of such returns and produce the same at a meeting of the judges so appointed in each of the counties comprising said district, which meeting shall be held on the seventh day after the election, at the court-house of one of the counties, to be ascertained taking said counties alternately in alphabetical order.

SECTION 7. That the return judges from the several counties as aforesaid, having so met, shall cast up the several county returns, and shall make three copies of a general return of all the votes cast in the district for such office, each of which they shall certify, one of which they shall lodge in the office of the prothonotary of the county in which they so meet, another of which they shall inclose, seal, and direct to the Secretary of the Commonwealth, and the third they shall deliver to the person appearing from such general return to have received the largest number of votes cast.

SECTION 8. The Governor is hereby authorized to nominate and appoint, with the advice and consent of the Senate, all president and additional law judges authorized and required by this act, except in the Forty-seventh district, where the present president judge of the Twenty-fourth district shall continue to exercise his present jurisdiction until a president judge shall have been elected therein, who shall hold their several offices until their successors are elected and commissioned according to the provisions of the Constitution, and until the appointment is made, the several judges now in commission shall continue to hold the courts in the several counties of the Commonwealth as heretofore.

SECTION 9. That in such districts as there may be no president judge learned in the law, or additional law judge, or judge learned in the law assigned by this act, the qualified electors of each county composing such district, shall, at the next general election, and whenever the same thereafter shall be necessary, at the times and places for holding such election within their respective election districts, elect one person learned in the

law as president judge of said district, and as many persons for additional law judges therefor as shall be required by the Constitution and laws.

SECTION 10. That the Governor shall commission all additional law judges or judges learned in the law, president judges of the districts to which they are assigned under this act for the remainder of the term for which they were elected, and at the election next preceding the expiration of the term of any president judge, additional law judge, or judge learned in the law, the qualified electors of every county composing such district shall vote for and elect their successors in office.

SECTION 11. That at the first term of the court held in the several districts of this Commonwealth, after the passage of this act, by the judges duly elected or appointed to hold the same, it shall be the duty of said judges to make an order fixing the time of holding the regular terms of said courts, which order, and all modifications or changes thereof, shall be published in not less than two newspapers in each county of the district at least thirty days before the time so fixed for holding said courts.

SECTION 12. That where, under the provisions of former statutes, there were two judges residing in the same district, and that district by this act has been divided, the president judge shall be and is hereby assigned to and shall continue to hold the courts in the county or counties forming the district bearing the number of the district in which he was elected, and the additional law judge shall be assigned to and be the president judge of and hold the courts in the other district.

SECTION 13. That all acts or parts of acts inconsistent herewith be and the same are hereby repealed.

W. I. NEWELL,
President pro tem. of the Senate.
BEN. L. HEWIT,
Speaker of the House of Representatives.

EXECUTIVE CHAMER,
HARRISBURG, June 18, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, Senate bill No. 212, entitled "An act designating the judicial districts of the Commonwealth, and providing for the appointment and election of judges therein for issuing to additional judges learned in the law, commissions as president judges and manner of fixing the terms of court therein."

This bill has been passed in pursuance of section fourteen of the schedule of the Constitution. Only such objections as are founded upon its want of conformity to the organic law, or its violation of a settled public policy, should be allowed to prevail against it. Under statutes existing at the opening of the present session, there were in commission in the State seventy-seven judges of the courts of common pleas and orphans' courts learned in the law. With this act the number would be increased to eighty-six. Since the year 1874, the counties of Blair, Butler, Cambria, Clarion, Clearfield, McKean, and Tioga have become, by virtue of their increase of population, entitled to be constituted "separate judicial districts," and the office of associate judge therein would cease upon expiration of commissions of present incumbents. Owing, however, to the peculiar arrangement of these counties in their districts in the existing apportionment, the *necessary* increase of judges from this cause would be but three. In the counties named, this increase of three would be required by the positive mandate of the Constitution, over which there is, of course, neither legislative nor executive control. If any large discretion was left, under the Constit-

tution, to the law-making power, in the designation of the several judicial districts, it might be said that this bill is as nearly right as any *likely* to be made.

But a decisive point has been reached on this question, and, if errors have been made in the past, by reason of a failure to comply with the fundamental law or sound policy, no more favorable opportunity for revision and correction than the present will occur.

There is now a universal recognition of the inexpediency of the great increase of judges in the courts of common pleas, hindering their efficiency and affecting the dignity of the judicial office, and by imposing duties and labors upon them in many of the districts far within reasonable requirements upon their time and ability, tending to lower the public estimate of their functions. The number of law judges in Pennsylvania exceeds the number of the judges in all the courts of the United States, and the salaries of the judges in the State exceed the salaries paid the supreme judges, the circuit judges, and the district judges of the United States, by more than one hundred thousand dollars annually. If any tendency to impolitic, and inconvenient results exists in the judiciary article of the Constitution, we can, at least, minimize the mischief by a rigid adherence to the definitions and limitations of the article. The rules of apportionment which are prescribed, are found in article five section five of the Constitution, as follows : " Whenever a county shall contain forty thousand inhabitants, it shall constitute a separate judicial district, and shall elect one judge learned in the law. And the General Assembly shall provide for additional judges, as the business of the said districts may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or, if necessary, may be attached to contiguous districts, as the General Assembly may provide. The office of associate judge not learned in the law is abolished in counties forming separate districts ; but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms."

The analysis of this section by Chief Justice Agnew, in Commonwealth *ex rel.* Chase vs. Harding, 6 Norris' Reports, 351, to the extent to which it goes, may be accepted as strictly accurate. He says : " Under this section, the organization of *separate* districts consisting of a *single* county, and that of *single* districts composed of *several* counties, is different ; the former having but one judge, who holds all the courts alone, and additional *law* judges, when necessary for the dispatch of business ; the latter having three judges, one of whom, the president, is learned and the other two not learned in the law : the president being a judge of every county of his district, and the associates of only one county." According to this judicial exposition, the first division of the section constitutes counties containing forty thousand or upwards of population, (except Philadelphia and Allegheny, which are elsewhere treated of,) into a distinct class, and very clearly distinguishes them from those of less population. Each one of them is to be a "*separate district*," that is, a *separate county* district, with one law judge to preside in its courts, and with one or more such judges in addition, if the same shall be added by the Legislature, for the necessary transaction of its judicial business. And with equal certainty, according to this opinion, the second division of the section commands that counties below forty thousand in population shall be united together to form convenient *single districts*," or *districts with one law judge* to each. The explanation is properly added, that the law judge of a single district will sit with two unlearned associates in each county of his district, because such associates are allowed to all counties of the second class, or counties below forty thousand by the

third division of the section. When to these particulars we add, that where necessity shall require it, in order to complete an apportionment, a county of the second class may be "attached" to a contiguous separate county district, (4 Cons. Deb., 255; 6 ib., 503,) a general view of the section in all its principal divisions, is made complete.

The present bill designates each county of the State over forty thousand population as a separate county district, and so far, beyond all question, conforms to the Constitution, and its addition of law judges in some of those districts is also an exercise of valid power. So also its attachment of Potter county to the Tioga district is authorized by the second division of the constitutional section. But its creation of separate county districts from counties of small population raises a question of serious import, and challenges the construction of the fifth section of the fifth article of the Constitution, above stated.

Can a county of less population than forty thousand be made a "separate district?" This question appears to be answered by the text of the Constitution itself: "*Counties containing a population less than is sufficient to constitute separate districts shall be formed,*" &c. As those words immediately follow the provisions relating to counties above forty thousand, the conclusion is a necessary one that they relate to and embrace counties of less population than forty thousand, and they plainly declare the counties to which they *do* refer to be "insufficient" for constituting "separate districts." That these words embrace *all* counties under forty thousand appears from the fact that they are general, and that no other description of counties is afterwards indicated in this section. The section embraces all the counties of the Commonwealth, assigns each to a class, and, in its classification, exhausts all the territory of the State. No condition is stated in the section upon which a county of the "single district" class can pass into the "separate district" class, except by its increase of population to forty thousand.

An examination of the convention debates will show that it was intended by that body that counties falling below the minimum of population required for separate districts were "*to be united together*" or "attached to counties adjoining them." (6 Cons. Deb., 483, 493.) And the history of amendments proposed in convention by Mr. Craig, of Lawrence, and Mr. Mann, of Potter, and which led up to the Purviance amendment, ultimately adopted, is in the same line of evidence as to convention intent and purpose. (4 Cons. Deb., 151-7.)

It may be said that by the judicial apportionment act of 1874 several counties which were under forty thousand, according to the census of 1870, were made separate county districts, namely, Adams, Beaver, Delaware, Indiana, and Susquehanna. But that apportionment was not made under the fourteenth section of the schedule to the Constitution, as the present and all future ones will be. It was made under the thirteenth section of the schedule, and could be based upon the estimated population of counties in 1874. The Legislature was not to be controlled by a four-year old census, but by existing numbers, of which the Legislature itself was to judge. The present apportionment, however, must be made upon the actual figures ascertained by the decennial census of 1880. The counties of Beaver, Greene, Jefferson, Lawrence, and Lebanon, according to that census, each contain a population of less than forty thousand inhabitants. By this bill each of these counties is made a separate judicial district. If the foregoing reasoning is correct, these districts are illegally constituted, and if the bill shall take effect, will be organized in violation of the Constitution.

These considerations, if significant at all, are conclusive and fatal to the bill. There are, however, some other features of it not unworthy of atten-

tion, and which would compel its disapproval. By the terms of the bill it would seem that the additional law judge of the Twelfth district was to be transferred to the county of Lebanon. Very grave legal difficulties surround that proposition. The right by which a judge exercises his office should, of all rights, be free from doubt. The endeavor to make this transfer may result in an unseemly and serious conflict of authority, and endanger the orderly administration of the law by the introduction of confusion and illegality at its very source.

The bill creates an additional law judge in each of the counties of Erie and Crawford. This is a question of expediency, based solely upon considerations of what "the business of said districts may require." In these districts themselves, there is substantial unanimity of sentiment that the increase is not needed. As independent propositions, it is believed they would neither be demanded by the people in the districts nor receive legislative sanction.

An objection has been urged upon my attention that the counties of Adams and Fulton, as united in the bill, do not "form a convenient single district," within a reasonable interpretation of the Constitution. Although the Constitution does not require that counties joined in a single district shall be contiguous, it does assume that they shall bear "convenient" relations to each other.

A written plan has been submitted to me from a source likely to inspire the highest confidence in its practical value and wisdom, touching the organization of our courts, to utilize the services of common pleas judges, and relieve the Supreme Court. It is appended hereto and filed, that it may find such publicity and receive such consideration by the people and the Legislature as its importance is entitled to demand.

HENRY M. HOYT.

PLAN OF JUDICIAL ORGANIZATION.

Every five contiguous districts may be formed into an intermediate one —call it, if you please, a circuit—the five president judges to form the court. No writ of error or appeal to lie to the Supreme Court from any county court unless first carried to the intermediate court, and final judgment there entered. It could be so arranged that these intermediate courts should sit twice a year, at such place as they may from time to time elect. The prothonotary of the court of common pleas of the county where the court may sit, to be the clerk of the court. Some special provision may be made for Philadelphia and Allegheny. In Philadelphia the five president judges might form the court, and in Allegheny the three president judges.

The advantages of this system seem to be :

1. To reduce the number of writs of error and appeals to the Supreme Court, and thus allow the judges more time to consider and decide really important questions. In 1880 there were more than eight hundred cases argued in the Supreme Court, and about two hundred non-suits.-
2. It would tend to secure uniformity of practice in the several districts.
3. It would give more constant employment to the judges, which will the better qualify them for their office.
4. There would be no additional expense to the State.

No. 2.

AN ACT

To provide for the payment of the laborers of this Commonwealth at regular intervals.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That thirty days after the passage of this act all persons engaged in physical labor throughout this Commonwealth, except those salaried by the year and those laboring under special contracts, shall receive the wages due them in lawful money of the United States at least once every month: *Provided*, That the payment of the wages for any month shall not be made later than the fifteenth of the month following; any employer refusing or neglecting to pay such wages, after a demand for the same has been made, shall be liable to pay, in addition to the amount of such wages, a penalty for such refusal or neglect, of five per centum of such amount for every day such employer shall so refuse or neglect: *Provided further*, That nothing in this act shall be construed to prevent employers and employés from making any special contract, and by agreement in writing, to make such terms of payment as may be mutually satisfactory: *And provided further*, That nothing herein contained shall affect the rights of an employé to assign the whole or any part of his claim against his employer.

SECTION 2. In case a suit be entered by such employés, the employer shall have the right of appeal and stay of execution, but if the sum finally found to be due to such plaintiff by such employer for wages as shall equal in amount the judgment rendered by the justice or alderman against such employer, or exceeding in amount the sum of money admitted to be due and tendered by such employer to plaintiff, then the plaintiff shall be entitled to a judgment in the amount of said wages found to be due, and five per centum extra: *Provided, however*, That before such appeal shall be granted, bail, absolute, with two or more sufficient sureties, in three times the amount of said judgment, shall be given, conditional for the payment of the judgment finally recovered, together with interest and all cost.

SECTION 3. All acts or parts of acts inconsistent herewith are hereby repealed.

BEN. L. HEWIT,
Speaker of the House of Representatives.
CHARLES W. STONE,
President of the Senate.

EXECUTIVE DEPARTMENT, OFFICE OF THE GOVERNOR,
HARRISBURG, June 28, 1881.

I hereby file in the office of the Secretary of the Commonwealth, with my objections thereto, House bill No. 49, entitled "An act to provide for the payment of the laborers of this Commonwealth at regular intervals."

This bill provides "that thirty days after the passage of this act all persons engaged in physical labor throughout this Commonwealth, except those salaried by the year and those laboring under special contracts, shall receive the wages due them in lawful money of the United States at least once every month."

Every employer, in case of neglect or refusal to pay as specified, shall be liable to a penalty, in addition to the wages due, "of five per centum of such amount for every day such employer shall so refuse or neglect."

No mischief exists, nor has occasion yet arisen requiring an enactment like this, which undertakes to regulate in such detail the daily affairs of our life. It extends the penalties and compulsory process of the law into the economy of every household, and surrounds the most common and trivial transactions among men with the formalities and inconveniences of "special contracts" and "agreements in writing," methods of evasion, by the way, which may operate to avoid any virtue which there might be in the bill.

The first and second sections of the bill are inconsistent with each other, and cannot stand together. It compels the payment of wages "in lawful money of the United States," and leaves no room for the operations of exchange and barter, or any other form of payment, still less of credit. The public facts on official record disclose a single grievance in this connection which seems worthy of legislative attention; but its remedy by no means requires the wide scope of this bill.

In the report of the Bureau of Statistics for 1879, the chief of that department refers to some of the evils of the "truck system" or store orders. He suggests, from the information therein compiled, "that abuses exist and are practiced" in this respect to some extent in this State. He properly ascribes the failure to suppress this specific grievance by the sweeping character of the laws proposed and "the impossibilities attempted." He says, speaking of extensive mining and manufacturing enterprises especially, "we think, however, that law should compel the employer to pay his employé in the lawful money of the land; that the issuing of scrip should be prohibited, and that settlements in full should be made at least once a month. With this money earned as wages, the workman should be left free to purchase where he pleases and to the best advantage, whether that be in a company or any other store."

There is, it is believed, a very general concurrence in these propositions by political writers. The evil, if it be one, lies at a critical place in our social economy, and if remediable by statute, should be removed, as it is the source of much exaggeration, and furnishes ammunition for mere agitators.

At the present session of the General Assembly, Senate bill No. 67, with a view of effectuating these three purposes, was passed.

It is entitled "An act to secure to operators and laborers engaged in and about coal mines, manufactories of iron and steel, and all other manufactories, the payment of their wages at regular intervals, and in lawful money of the United States."

This act is divested of the penal features which have vitiated and defeated many previous attempts at legislative interference in this direction, and is aimed at the only mischiefs, growing out of this subject matter, which demand present remedy.

Under much unnecessary verbiage, its objects seem to be distinct, legitimate, and under reasonable limitations. It has received executive approval.

House bill No. 49 is inconsistent in its details with Senate bill No. 67, is unnecessary and impolitic.

It further allows the employer "stay of execution," and, to that extent, repeals the act of May 14, 1874, which provides "that no stay of execution shall be allowed on any judgment for one hundred dollars and less, when the same has been recovered for wages of manual labor;" a result possibly not contemplated, and one which would unsettle a policy now well established.

No. 3.

AN ACT

Conferring upon husbands, wives, and fathers the right of possession of the bodies of their deceased husbands, wives, and children.

WHEREAS, It frequently happens that the bodies of different members of the same family are interred in different cemeteries; therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That in all cases in which deceased members of one family have been or may hereafter be interred in different cemeteries or burial grounds, or in different lots in the same cemetery or burial ground, it shall and may be lawful for the surviving husband, wife, or father to have the possession, custody, and control of the body or bodies of such deceased persons, and to remove the same to such other place of burial as he may have provided for the same.

SECTION 2. It shall be the duty of the officers, directors, and managers of all cemetery companies and burial grounds within this Commonwealth, upon the application of the surviving husband of a deceased wife, the surviving wife of a deceased husband, or the surviving father of deceased child or children, to issue a permit or permits for the removal of the body or bodies of such deceased husband, wife, child, or children from any cemetery or burial place in this Commonwealth, to such other cemetery or burial place as such husband, wife, or father may desire: *Provided*, That such husband, wife, or father shall have first obtained from the proper board of health permission for such removal.

SECTION 3. In case the officers, directors, or managers of any cemetery or burial ground in this Commonwealth shall refuse to grant permission to the surviving husband, wife, or father to remove the body or bodies of his or her deceased husband, wife, child, or children from any such cemetery or burial ground, it shall be lawful for said husband, wife, or father to recover the possession of said body or bodies, by action of replevin, duly brought and prosecuted according to the course of the common law, or by writ of mandamus directed to the officers, directors, or managers of such cemetery or burial ground: *Provided*, That the provisions of this act shall only apply to cities of the first class.

CHARLES W. STONE,
President of the Senate.
BEN. L. HEWIT,
Speaker of the House of Representatives.

EXECUTIVE DEPARTMENT, OFFICE OF THE GOVERNOR,
HARRISBURG, June 28, 1881.

I hereby file in the office of the Secretary of the Commonwealth, Senate bill No. 274, entitled "An act conferring upon husbands, wives, and fathers the right of possession of the bodies of their deceased husbands, wives, and children," with my objections thereto.

The act provides generally (section one) that the surviving husband, wife, or father of one family shall have possession, custody, and control of the body or bodies of the deceased members of the family who have been or may be hereafter interred to remove them to other places of burial, and specially (sections two and three) authorizes a surviving husband, wife, or father to demand of the officers of burial places the body of a deceased wife, husband, or child, and in case of refusal of a permit of removal by

said officers to recover possession of the body by writ of replevin or writ of mandamus; but no such right is given to the mother in any part of the bill; and finally its provisions are to apply to cities of the first class only.

The provisions of the act are vague, retroactive, conflicting, and local.

By the first section, the possession of the body or bodies of deceased members of "one family," is given to certain surviving members, but the bill does not specify the order in which two surviving members shall take or hold. Taken in connection with the second section, even when the term "one family" is restricted to the more limited sense which any interpretation of the sections will admit of, this radical defect would be productive of numerous conflicting claims.

The ambiguities and difficulties thence arising are in marked contrast with the rational principles of the present well-settled law and public policy. "So universal is the right of sepulture, that the common law casts the duty of providing it, and of carrying to the grave, the dead body decently covered, upon the person under whose roof the death takes place." Supplementary to this rule of the common law, to secure to every person a decent burial, our courts have decided: "That the right to bury a corpse and preserve its remains, in the absence of any testamentary disposition, belongs exclusively to the *next of kin*," and "that the duty of the administrator or executor terminates with the burial of the deceased in a manner suitable to his estate. (Wynkoop vs. Wynkoop, 6 Wright, 293.)

I see no necessity, either of policy or sentiment, for disturbing these principles. It is rarely that any disputes have arisen under them, and still more rarely that the courts have been asked to interfere. The decorously conducted case, above referred to, is the only one of the kind, so far as I am aware, in the reports of Pennsylvania.

The means provided to enforce the purposes of the act are open to grave objection. In the official proceedings of a writ of replevin it is not unreasonable to anticipate unavoidable consequences, alike shocking to our respect for the dead and detrimental to public propriety. Nor is the alternative of mandamus much more acceptable. And both remedies remove such controversies out of the courts of equity, to which they properly belong and in which they can be most decently tried.

It is scarcely necessary to point out the obvious objection to the last proviso. If the principles of the bill are proper or necessary, they should be given general operation. The classifications of the cities of the Commonwealth for municipal legislation appropriate to each class, is probably necessary and justified by the Constitution, but for the purposes intended in this bill no reason can be urged to justify such classification.

It is repugnant to our traditions and feelings to acknowledge the right of property in man, even though he be dead, and the law has heretofore carefully and judiciously, avoided the recognition of any the slightest ownership of a corpse, except such as is unavoidably incident to mere possession for the purposes of decent sepulture, and its preservation, by the next of kin. But the rights of the dead are sufficiently protected, the duty of the living sufficiently defined, and no controversies of any moment have disturbed its general and reverent performance. Instead of inviting such unseemly contests, the policy of the law has been to strengthen, if possible, the universal discouragement and abhorrence with which they have been met. After the last duties have been paid by the patriarch, the next of kin, or by society, the dead are no longer of this world, and their mortal remains should be permitted to mingle with the dust, undisturbed by the passions and, as far as may be, the interests of posterity.

No. 4.
AN ACT.

For the collection of unpaid city taxes in cities of the fourth class.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That from and after the passage of this act, the councils of any city of the fourth class are hereby empowered to pass such ordinances concerning the transfer of the tax duplicate to the mayor of the said city and appointment of collectors to collect the outstanding city tax as they shall think proper, and the time as fixed by the said councils for the transfer of the said duplicate by the receiver of taxes of said city of the fourth class shall be the proper time to make such transfer, any law to the contrary notwithstanding.

SECTION 2. All laws inconsistent herewith are hereby repealed.

BEN. L. HEWIT,
Speaker of the House of Representatives,
W. I. NEWELL,
President pro tem. of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 29, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 243, entitled "An act for the collection of unpaid city taxes in cities of the fourth class."

The effect of this bill is to allow city councils to take the tax duplicates out of the hands of the receiver of taxes, and place them in the hands of the mayor for collection, and to appoint collectors as they may think proper.

How such transfer could be advantageous to such cities is not easily discernable. The receivers of taxes are clothed with all needful authority for the collection of taxes. They give bond for the faithful performance of their duty, and are responsible for the payment of uncollected tax that might have been collected. Mayors of cities are vested with no such authority. They give no bond, condition to perform such duty, and could be held for nothing but amounts actually received. Such a change of agencies for the collection of tax, unless supported by some reason not apparent in practice or on the face of this bill, would be open to many and grave objections, and I, therefore, withhold my approval.

HENRY M. HOYT.

No. 5.
AN ACT

To regulate the holding of, and to prevent frauds in, the primary elections of the Democratic party in the several election districts of the county of Westmoreland.

WHEREAS, The Democratic party of Westmoreland county has adopted the plan of holding primary elections by popular vote, to choose candidates for the party to support for office at the general and other elections of this Commonwealth:

And whereas, It is desired to have said elections faithfully and honestly conducted; therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That from and after the passage of this act, it shall be lawful, and it is hereby made the duty of the judges, inspectors, and clerks of the primary elections of the Democratic party of Westmoreland county, before entering upon the discharge of their duties, to severally take and subscribe to an oath or affirmation, in the presence of each other, in form as follows, namely: "I (A B) do . . . that I will, as judge, (inspector, or clerk, as the case may be,) at the ensuing election, impartially and faithfully perform my duties, in accordance with the laws and Constitution of the Commonwealth of Pennsylvania, and the rules and regulations adopted by the Democratic party of Westmoreland county for the government of the said primary elections, to the best of my judgment and abilities." The oath or affirmation shall be first administered to the judge by one of the inspectors; then the judge so qualified shall administer the oath or affirmation to the inspectors and clerks.

SECTION 2. If any judge, inspector, or clerk of a primary election as aforesaid shall presume to act in such capacity before the taking and subscribing to the oath or affirmation required by this act, he shall, on conviction, be fined not exceeding two hundred dollars; and if any judge, inspector, or clerk, when in the discharge of his duties as such, shall willfully disregard or violate the provisions of any rule duly made by the said Democratic party of Westmoreland county for the government of the primary elections of the party, he shall, on conviction, be fined not exceeding two hundred dollars; and if any judge or inspector of a primary election, as aforesaid, shall knowingly reject the vote of any person entitled to vote under the rules of the said Democratic party, or shall knowingly receive the vote of any person not qualified, as aforesaid, shall, on conviction, be fined not exceeding two hundred dollars; and if any judge, inspectors, or clerk of a primary election, as aforesaid, shall be guilty of any willful fraud in the discharge of his duties by destroying or defacing ballots, adding ballots to the poll other than those lawfully voted, by stuffing the ballot-box, by false counting, by making false returns, or by any act, device, or thing whatsoever; the person so offending shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding five hundred dollars, or imprisoned not exceeding one year, or both, or either, at the discretion of the court.

BEN. L. HEWIT,
Speaker of the House of Representatives.
CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 29, 1881.

I hereby file in the office of the Secretary of the Commonwealth House bill No. 450, with my objections, entitled "An act to regulate the holding of, and to prevent frauds in, the primary elections of the Democratic party in the several election districts of the county of Westmoreland."

This bill is in direct conflict of section seven article three of the Constitution, which prohibits the passing of any local or special laws regulating the affairs of counties, cities, townships, wards, boroughs, or school districts. Although some special laws, touching the subject matter of this bill have got upon the statute books, the necessity of this and other such encumbering the record no longer exists. The approval of House bill No. 121, entitled "An act regulating the holding of and to prevent frauds in the

primary elections of the several political parties in the Commonwealth of Pennsylvania," covers the ground of the bill in hand, and renders it superfluous.

HENRY M. HOYT.

No. 6.

A SUPPLEMENT

To an act entitled "An act to provide for the division of counties of this Commonwealth and the erection of new counties therefrom," approved the seventeenth day of April, Anno Domini one thousand eight hundred and seventy-eight, providing for and regulating the removal of proceedings from the orphans' court of the county divided to the orphans' court of the county erected, in cases where the estate lies or the parties in interest reside within the county erected.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That upon the erection of a new county, as provided in the act to which this is a supplement, all proceedings in the orphans' court commenced in the county from which said new county shall have been taken in estates wherein the lands of the decedent, over which the said orphans' court has jurisdiction, lie wholly within the limits of the new county, and in estates of decedents whose last residence was within the limits of the new county, as may be shown by affidavit filed to that effect, shall, upon application to a law judge of said court, and on his order, be removed to said new county, and in such case the said proceedings shall forthwith be certified, so far as the docket entries are concerned, and the files connected therewith shall also forthwith be delivered by the clerk of said court to the like officers of the new county, who shall enter the same of record and in file respectively; and like proceedings shall thereafter be had thereon as fully and completely as though letters had originally been granted in the new county, and in the case of other estates, where it shall be made to appear to the orphans' court of the original county that all persons interested in the estate are residents of the new county, or that it will be to the advantage of the estate or to the persons interested therein, that such removal should be made, the proceedings shall be certified and files removed in like manner as aforesaid, and thereafter the proceedings shall be the same in the new county as though letters had been originally granted. There and in all cases where certificates are made in accordance with the provisions of this supplement, the costs shall be paid by the party applying for the same, and be taxed in the proceedings to abide the event thereof.

BEN. L. HEWIT,
Speaker of the House of Representatives.
W. I. NEWELL,
President pro tem. of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 29, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 299, entitled "A supplement to an act entitled 'An act to provide for the division of counties of this Commonwealth, and the erection of new counties therefrom,' approved the seventeenth day

of April, Anno Domini one thousand eight hundred and seventy-eight, providing for and regulating the removal of proceedings from the orphans' court of the county divided to the orphans' court of the county erected in cases where the estate lies or the parties in interest reside within the county erected."

This act, though general in its terms, is applicable only to the counties of Luzerne and Lackawanna.

Nearly three years have elapsed since the division of Luzerne county, and a large proportion of all the orphans' court business pertaining to estates situate in Lackawanna county has been settled in the separate orphans' court of Luzerne. In those remaining unsettled, proceedings partially completed have been had before the judge of that court, and the reasons for permitting them to be completely settled without removal in a half finished state to another tribunal are more cogent than the mere convenience of saving a few miles of travel to parties and attorneys interested. I therefore withhold my approval of this bill.

HENRY M. HOYT.

No. 7.

AN ACT

Relative to adoption of a city code in cities of third class.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That whenever any city of the third class shall desire to make and adopt a code containing ordinances of the city for publication in book form, it shall be lawful for such city to adopt such ordinances, when printed in book form, and any acts of Assembly requiring proposed ordinances to be printed for the members of councils, as well as all acts of Assembly requiring advertising and recording of ordinances, shall not apply to such code.

BEN. L. HEWIT,

Speaker of the House of Representatives.

W. I. NEWELL,

President pro tem. of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 29, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 110, entitled "An act relative to adoption of a city code in cities of the third class."

The purpose of this act seems to be to enable city councils to adopt as a whole, in form of a printed book, a system of ordinances for the government of cities of the third class, without publication or record.

I doubt the propriety of such legislation. The well-established and uniform policy of the law has always been to require the publication, by hand-bills and otherwise, of such rules and regulations as may have been, from time to time, adopted by city councils, for the information of persons who are expected to observe them. There is now nothing to prevent the publication of ordinances in book form if desirable, and, therefore, the act is unnecessary as conferring power for that purpose. I see no good reason for departing from an established usage in cities of this particular class, and

am apprehensive that inconvenience and trouble might arise from the adoption of a body of regulations without provision for their publication for the use of councilmen or citizens, or for their record among the archives of the city.

HENRY M. HOYT.

No. 8.

AN ACT

To repeal an act relating to sealers of weights and measures, approved the fourth day of April, Anno Domini one thousand eight hundred and seventy-seven.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That an act approved the fourth day of April, Anno Domini one thousand eight hundred and seventy-seven, which reads as follows: "That the Governor shall have power to appoint one person as sealer of weights and measures in the several counties of this Commonwealth where no such office now exists by law, whose term of office shall be for three years, and be subject to the laws now in force governing such offices in this Commonwealth," approved the fourth day of April, Anno Domini, one thousand eight hundred and seventy-seven, be and the same is hereby repealed.

BEN. L. HEWIT,
Speaker of the House of Representatives.

CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 29, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 144, entitled "An act to repeal an act relating to sealers of weights and measures, approved the fourth day of April, one thousand eight hundred and seventy-seven."

The intent of this act is to abolish the office of sealer of weights and measures in all the counties of this Commonwealth in which the office had not been filled in the year 1877, by the repeal of the act of 4 April, 1877.

The repeal of this act in no wise affects the act of 15 April, 1845, (P. L., 444,) which authorizes the appointment of a sealer of weights and measures in each county that applies for and takes out copies of the standards of weights and measures under the second section of said act, and the Governor may appoint a sealer of weights and measures in any county taking out such standards, notwithstanding the repeal of the act 1877. The act under consideration, therefore, fails in its purpose. If such were not the case, I am not prepared to approve an act destroying this office in a portion of the counties of the Commonwealth. I am of opinion that the office is valuable as a means of securing uniform and just weights and measurements for the sale of commodities, and that experience has demonstrated its wisdom as a means of preventing fraud, which must generally fall on those least able to endure it.

HENRY M. HOYT.

No. 9.

AN ACT

For the protection of dairyman and to prevent deception in sales of butter and cheese.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That from and after the passage of this act, every person who shall manufacture for sale or who shall offer or expose for sale, or who shall export to a foreign country by the tub, firkin, box, or package, or any greater quantity, any article or substance in semblance of butter or cheese, not the legitimate product of the dairy, and not made exclusively of milk or cream, but into which any oil or fat, not produced from milk or cream, enters as a component part or into which melted butter or any oil thereof has been introduced to take the place of cream, shall distinctly and durably stamp, brand, or mark upon the top and also upon the side of every such tub, firkin, box, or package of such article or substance the words "imitation butter" or cheese only where it can be plainly seen in Roman letters, which shall be burned on or painted thereon with permanent black paint, in a straight line, and shall be not less than one half inch in length, and, if for export, shall also invoice the same and clear the same through the custom-house as imitation butter or cheese. And in case of retail sales of such articles or substance in parcel, the seller shall in all cases sell or offer or expose the same for sale from a tub, firkin, or box, or package stamped, branded, or marked as herein stated, and shall also deliver therewith to the purchaser a printed label bearing the plainly printed words imitation butter or cheese only, in Roman letters, not less than one half inch in length, which shall be printed in a straight line. And every proprietor or manager of a hotel, boarding-house, or restaurant, who shall serve, place, or cause to be served or placed in parcels on the table or counter for their boarders or customers any such articles or substance as herein stated, shall post in at least four conspicuous places in the dining or lunch-room of said hotel, boarding-house, or restaurant, a printed label, bearing the plainly printed words, imitation butter or cheese served here only, in Roman letters, not less than one inch in length, which shall be printed in not more than two continuous straight lines. And every sale of such article, or substance, or export of the same by the tub, firkin, box, or package, or in any greater quantity not so stamped, branded, or marked, and if exported, not invoiced and cleared through the custom-house as imitation butter or cheese, and every sale of such article or substance at retail in parcels that shall not be sold from a tub, firkin, box, or package, so stamped, branded, or marked or without delivery of a label therewith as above stated, is declared to be unlawful and void; and no action upon any contract shall be maintained in any of the courts of this State to recover upon any contract for the sale of any such article or semblance not so stamped, branded, marked, or labeled, or sold.

SECTION 2. Every person who shall sell, or offer, or expose for sale, or export to a foreign country, or have in his or her possession, with intent to sell by the tub, firkin, box, or package, or in any greater quantity, any of the said article or substance required by the first section of this act to be stamped, branded, marked; and, if exported, invoiced and cleared through the custom-house as imitation butter or cheese, as therein stated, that shall not be so stamped, branded, marked, and if exported, invoiced according to the provisions of this act, or in case of retail sales in parcels, every person who shall sell, or offer, or expose for sale any of said article or substance,

without selling, offering, or exposing for sale the same from a tub, firkin, box, or package, stamped, branded, or marked as in said first section, stated, or without delivery of a label as required by section one of this act; or if used or served in parcels at a hotel, boarding-house, or restaurant, every proprietor or manager who shall serve, place, or cause to be served or placed on the table or counter for their boarders or customers any of said article or substance, without posting four labels, as required by section one of this act, shall for every such offense forfeit and pay a fine of one hundred dollars, to be recovered, with costs, in any of the courts of this State having cognizance thereof, in an action to be prosecuted by any district attorney in the name of the Commonwealth, and the one half of such recovery shall be paid to the informer, and the residue shall be applied to the support of the poor in the county where such recovery is had.

SECTION 3. Every person who shall sell or offer or expose for sale or export to a foreign country, or who shall cause or procure to be sold, offered, or exposed for sale by the tub, firkin, box, or package, or in any greater quantity any article or substance required by the first section of this act, to be stamped, branded, marked, and if exported, invoiced, and cleared as therein stated not so stamped, branded, marked, and if exported, invoiced, and cleared, or in case of retail sales in parcels, every person who shall sell, or offer or expose for sale, or who shall cause or procure to be sold, offered or exposed for sale any article or substance required by the first section of this act to be sold, offered, or exposed for such sale from a tub, firkin, box or package, stamped, branded, or marked and labeled as therein stated contrary to the provisions of said section, or if the proprietor or manager of a hotel, boarding-house or restaurant, who shall serve, place, or cause to be served or placed in parcels on the table or counter for their boarders or customers, any article or substance required by the first section of this act to be stamped, branded, or marked, and printed labels posted, as therein stated, contrary to the provisions of said section, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars or more than one hundred dollars, or by imprisonment in the county jail for not less than ten or more than thirty days, or by both such fine and imprisonment for each and every offense.

SECTION 4. All laws or parts of laws inconsistent herewith are hereby repealed.

BEN. L. HEWIT,
Speaker of the House of Representatives.
CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 29, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 550, entitled "An act for the protection of dairymen, and to prevent deception in sales of butter and cheese."

This bill was intended to prohibit the exportation or sale of the article known to commerce as oleomargarine, unless the packages shall be marked "imitation butter," or the use thereof in hotels, restaurants, or boarding-houses, unless a sign be conspicuously posted containing the words "imitation butter or cheese served here."

The manufacture of oleomargarine is protected by letters patent, issued by the United States, under that provision of the Constitution which gives Congress the power to promote the progress of science and the useful arts, by securing for limited periods to inventors, an exclusive right to their

discoveries. An inventor has an undoubted right to use the name given by himself to his invention, especially if it be descriptive of the article, and not calculated to deceive, and there is grave doubt whether the General Assembly has power to compel a patentee to name or label his invention by a designation that would tend to diminish its sale and his profit, unless it be found dangerous to health or morals.

By the act of 22 May, 1878, vendors of the article covered by the act under consideration must mark it "oleomargarine," and its sale without this designation is made a penal offense. This name is sufficiently descriptive of the article, so that no one can be deceived. Its use is not understood to be deleterious to health or against public morals, and therefore to arbitrarily brand it by a name calculated to injure its sale, and which is not descriptive of its character could not be justified as an exercise of police power. Its use is a question of taste and not of morals or health.

I am, therefore, of the opinion that this act ought not to become a law, on the ground that its operation would tend to infringe the rights secured to patentees by acts of Congress under the Constitution of the United States, and that any mischief likely to arise from the sale of the article known as oleomargarine is sufficiently provided against by the act of the General Assembly of Pennsylvania above quoted.

HENRY M. HOYT.

No. 10.

AN ACT

Regulating the election of prothonotaries, clerks of the several courts, registers of wills, and recorders of deeds in counties entitled to be constituted separate judicial districts, where one person is now elected to fill all of said offices.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That in all counties in this Commonwealth which are entitled to be constituted separate judicial districts, as provided in section five, article five of the Constitution, where one person is now elected to fill the offices of prothonotary of the court of common pleas, register of wills, recorder of deeds, clerk of the court of quarter sessions, oyer and terminer, and clerk of the orphans' court, the qualified electors, at the general election next preceding the expiration of the term of office of said person shall, in the manner and for the term now fixed by law, elect one person to fill the office of prothonotary of the court of common pleas, clerk of the courts of quarter sessions and oyer and terminer, and one other person to fill the office of register of wills and recorder of deeds and clerk of the orphans' court; *Provided*, This act shall not apply to counties having cities of the first class.

BEN. L. HEWIT,
Speaker of the House of Representatives.
CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 29, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 484, entitled "An act regulating the election

of prothonotaries, clerks of the several courts, registers of wills and recorders of deeds in counties entitled to be constituted separate judicial districts, where one person is now elected to fill all of said offices."

This bill undertakes to regulate so important a county affair as the election of county officers in such counties only as constitute separate judicial districts. All laws regulating county affairs must be general—article three, section seven Constitution. No such classification as that attempted in this bill is necessary, nor can it be allowed under the Constitution. For this reason, I withhold my approval.

HENRY M. HOYT.

No. 11.

AN ACT

To provide for fixing the compensation to be paid for boarding prisoners committed to the jails of the several counties where there is no special law providing for the same, and to repeal the act of eleventh of April, one thousand eight hundred and fifty-six, relative to the sheriffs of this Commonwealth.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the sheriffs of the several counties of this Commonwealth, where there is no special law fixing a different rate of compensation to whom are committed the custody of prisoners, shall hereafter receive such allowance for boarding said prisoners as may be fixed from time to time by the court of quarter sessions of the respective counties not exceeding fifty cents per day for each prisoner.

SECTION 2. The act of the eleventh of April, one thousand eight hundred and fifty-six, entitled "An act relative to the sheriffs of this Commonwealth," is hereby repealed.

W. I. NEWELL,
President pro tem. of the Senate.

BEN. L. HEWIT,
Speaker of the House of Representatives.

EXECUTIVE CHAMBER,
HARRISBURG, June 29, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, Senate bill No. 57, entitled "An act to provide for fixing the compensation to be paid for boarding prisoners committed to the jails of the several counties, where there is no special law providing for the same, and to repeal the act of 11th of April, 1856, relative to the sheriffs of this Commonwealth.

This bill is by its terms confined to counties in which certain special laws are not in force, and to that extent is an attempt to classify the counties of the Commonwealth in a manner not recognized by the decisions of the Supreme Court and unknown to the Constitution.

The mandate of the Constitution is found in the seventh section of the third article, is that "no local or special bill shall be passed regulating the affairs of counties."

Whether this bill applies to one or more counties depends upon whether a greater or less number have local laws on the subject of compensating sheriffs for boarding prisoners. Such classification if allowed and extended

would be likely to soon work a substantial nullification of a wholesome constitutional provision. In the language of the Supreme Court in a recent case, this is classification run wild.

No reason is known why this subject should not be regulated by a law of uniform operation applicable to all the counties of the Commonwealth repealing all local and special statutes.

HENRY M. HOYT.

No. 12.

AN ACT

To enlarge the jurisdiction of the courts of common pleas in certain cases.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the courts of common pleas of the several counties in this Commonwealth shall have power to hear and adjudicate all claims or unsettled accounts for work done, materials furnished, money advanced, or personal services rendered within last ten years in the management or repairs of the national road or the bridges thereon, and to direct payment to be made out of any moneys arising from tolls collected thereon, and the commissioner in charge shall be entitled to credit for the amount thus paid in annual settlement of his account: *Provided*, That the court may order the amount found due to any creditor or claimant to be paid in annual payments, so as not to interfere with the proper repairs of the road.

SECTION 2. All acts or parts of acts inconsistent with this act are hereby repealed.

W. I. NEWELL,
President pro tem. of the Senate.

BEN. L. HEWIT,
Speaker of the House of Representatives.

EXECUTIVE CHAMBER,
HARRISBURG, June 29, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, Senate bill No. 275, entitled "An act to enlarge the jurisdiction of the courts of common pleas in certain cases."

This bill confers upon courts of common pleas the power to hear and adjudicate all claims or unsettled accounts for work done, materials furnished, money advanced, or personal service rendered within the last ten years in the management or repairs of the national road or the bridges thereon, and to direct payment to be made out of any money arising from tolls.

No reason is known to exist why the statute of limitations, applicable to all other citizens of this Commonwealth, should be suspended and a new remedy furnished to the particular class of persons mentioned or intended to be covered by this act.

The general policy of the law that claims shall be barred after the lapse of six years, is just in theory and satisfactory in practice. I am of opinion that it ought not to be disturbed, and that legislative exceptions to the general rule are vicious, and if allowed to creep in, would soon become intolerable.

HENRY M. HOYT.

No. 13.

AN ACT

To repeal an act authorizing clerks of markets to weigh butter, et cetera.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That so much of the act of Assembly, passed March eighteen, one thousand seven hundred and seventy-five, entitled "An act to regulate the assize of bread, and for other purposes therein mentioned, and the supplements thereto, as authorizes the clerks of markets to weigh butter, lard, and sausage, be, and the same are hereby, repealed."

BEN. L. HEWIT,

Speaker of the House of Representatives.

W. I. NEWELL,

President pro tem. of the Senate.

EXECUTIVE CHAMBER,

HARRISBURG, June 29, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 149, entitled "An act to repeal an act authorizing clerks of markets to weigh butter, et cetera."

The original law repealed by this bill has been in force upwards of one hundred and six years. It was designed to prevent the sale of short weight packages of butter, and by the act of 1872, was extended to sausages and lard exposed for sale in the markets of Philadelphia. Injustice in the confiscation of such articles exposed for sale and found to be deficient in weight by the market clerk, is provided against by the right of appeal to a magistrate. These acts are wholesome, and do not touch an honest dealer. They are safeguards against petty frauds in the weight of necessary articles of food, and might, with propriety, be extended to other articles sold in packages of specified weight.

The wisest of men said, "A false balance is an abomination to the Lord, but a just weight is his delight."

No sufficient reason can be assigned, in the interest of morality and justice, for the repeal of these acts. I therefore withhold my approval of this repealing bill.

HENRY M. HOYT.

No. 14.

AN ACT

Relating to auctioneers in cities of the first class.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That upon any citizen of this Commonwealth paying into the State treasury the sum of five hundred dollars, and giving bonds in the sum of two thousand dollars, to be approved by any judge of any court of common pleas, the Governor shall thereupon grant him a commission for one year to make sales, to any amount, of horses, cattle, and other live stock, vehicles of all kinds, and all articles appertaining thereto, by auction, outcry, or on commission, and such auctioneers so

commissioned shall not be liable for the payment of any other license or State tax upon such sales made by them: *Provided*, That the provisions of this act shall apply only to cities of the first class.

SECTION 2. All acts or parts of acts inconsistent herewith are hereby repealed.

CHARLES W. STONE,
President of the Senate.
BEN. L. HEWIT,
Speaker of the House of Representatives.

EXECUTIVE CHAMBER,
HARRISBURG, June 30, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, Senate bill No. 114, entitled "An act relating to auctioneers in cities of the first class."

The only result accomplished by this act is to relieve certain auctioneers in cities of the first class from the payment of taxes on their sales and to the extent of the amount of such tax is detrimental to the public treasury. The act imposes no greater license fee than that now exacted by law, but simply takes off a tax. Why the sales of horses, cattle, and vehicles by auction should be relieved from taxation and other property pay a tax, does not appear. I am of the opinion that the bill is not advantageous to the interest of the Commonwealth or equitable in its operation, and I, therefore, withhold my approval.

HENRY M. HOYT.

No. 15.

AN ACT

To authorize the commissioners of the several counties of this Commonwealth, excepting in cities of the first class, and in counties having special laws regulating prisons, to discharge from prison all persons confined in jail without proceedings under the insolvent laws.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That from and after the passage of this act the commissioners of the several counties of this Commonwealth shall be and they are hereby authorized upon the order of the court of quarter sessions or on vacation of a law judge thereof, in the exercise of its discretion, and upon such terms as said court or judge as aforesaid may impose to discharge from prison, without the delay and expense of any proceedings under the insolvent laws of this Commonwealth, every convict who shall have served out his or her term of imprisonment, who shall have been committed for non-payment of costs, notwithstanding such convict shall not have paid the costs of prosecution fine or made restitution or paid the value of the stolen goods or property: *Provided*, That in the opinion of said commissioners such convict is unable to pay or restore the same: *And provided*, That such discharge shall not prevent the Commonwealth or any person interested in such payment or restitution from proceeding by action to recover the same from the property of such convict, but no such convict shall be so discharged until he or she shall have made under oath or affirmation duplicate schedules of all his or her property, real, personal, or mixed so far as he or she can ascertain the same, one of which

shall be filed among the papers of the said prison and the other with the clerk of the court of quarter sessions: *Provided further*, That nothing in said proceedings shall either add to or take from the liability of said county for costs under existing laws of this Commonwealth: *Provided*, That this act shall not apply to cities of the first class nor to counties having special laws regulating prisons.

SECTION 2. All laws or parts of laws inconsistent herewith are hereby repealed.

BEN. L. HEWIT,
Speaker of the House of Representatives.
 CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
 HARRISBURG, June 30, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 24, entitled "An act to authorize the commissioners of the several counties of this Commonwealth, excepting in cities of the first class, and in counties having special laws regulating prisons to discharge from prison all persons confined in jail without proceedings under the insolvent laws."

This bill undertakes to authorize the commissioners of the counties of this Commonwealth, except in those having special laws, and in cities of the first class, to perform certain acts pertaining to the county business. It is in effect an attempt to classify counties by the curious standard of the possession or non-possession of certain laws. Whether this act is applicable to one or more counties could only be ascertained by an examination of the special acts applicable to all counties. I am of opinion that this kind of classification is not only unnecessary, but not to be permitted under the seventh section of the third article of the Constitution which forbids the passage of special or local laws regulating the affairs of counties. A law general in its terms, but in fact, excepting a majority or large number of the counties of the Commonwealth from its operation, would be an evasion of a wholesome constitutional limitation, and might be taken as a precedent for a general law excluding all counties but one. General laws applicable to the case treated in this bill could easily be framed, and therefore there is no necessity to justify the classification attempted. For these reasons I withhold my approval.

HENRY M. HOYT.

No. 16.

AN ACT

Appropriating ten thousand dollars to the Milton school district, for the reerection and payment of public buildings destroyed by the fire of Milton, May fourteenth, one thousand eight hundred and eighty.

WHEREAS, The Milton school district lost their public school buildings by the destructive fire of May the fourteenth, one thousand eight hundred and eighty, which also destroyed all the churches and other public buildings, and the entire business part of said town.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the sum of ten thousand

dollars be, and the same is hereby appropriated out of the State treasury to the said Milton school district, to assist them in the reerection of the said buildings so destroyed, said sum to be paid to the proper authorities, in quarterly payments, commencing June first, Anno Domini one thousand eight hundred and eighty-one.

BEN. L. HEWIT,

Speaker of the House of Representatives.

CHARLES W. STONE,

President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 30, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 335, entitled "An act appropriating ten thousand dollars to the Milton school district, for the reerection and payment of public buildings destroyed by the fire of Milton, May fourteenth, one thousand eight hundred and eighty."

This act appropriates the sum of ten thousand dollars to the Milton school district, in consideration of the destruction of their buildings by fire, in the year 1880, at the time when a general conflagration destroyed the business part of the town of Milton.

A similar appropriation of seventy-five thousand dollars to the sufferers by a fire at Somerset, in the year 1872, failed to receive executive sanction, as being contrary to public policy. The reasons stated by his Excellency John F. Hartranft, for withholding approval of that bill are applicable in all their force to this. Since that time the Constitution of 1874 has been adopted, and by the eighteenth section of the third article, appropriations of this character are expressly forbidden.

It provides that "no appropriation, except for pensions or gratuities for military services, shall be made for charitable, educational, or benevolent purposes, to any person or community." An appropriation to a school district is an appropriation to a community, as the bounds of the district are coterminous with the borough or township, and every citizen is a beneficiary. Doubtless many of the school-taxpayers of Milton, though losers by the fire, are not in need of pecuniary relief. In no case has the State donated money to those not in destitute circumstances. The operation of this bill would be to relieve those least needing relief from the payment of the taxes necessary to reconstruct suitable school buildings, as the burden of taxation must necessarily fall on the largest holders of property.

Such charitable institutions as are fostered by the State have no means of helping themselves other than by appeals to the benevolent. A school district has power to lay under contribution every taxpayer and all taxable property within its limits, and to collect by law sufficient for its wants.

While the citizens of Milton may be now less able to bear the burdens of taxation than they were before they suffered loss by fire, yet their case is not one of destitution or absolute want, nor is there a probability that their children will be unprovided with the ordinary opportunities for public school education, if the building proposed to be erected with the money here appropriated is never built. This case is, therefore, one in which the money appropriated would go for the benefit of the needy and those who are not needy alike; and it is, therefore, exactly within the reasons assigned for the veto of the bill for the relief of the citizens of Somerset before the adoption of the new Constitution. A glance at the debates of the convention will show that the intention of the provision above quoted was, to cut off, without remedy, just such appropriations at this. Therefore, though

sympathizing with the misfortunes of the citizens of Milton, not only on grounds of public policy, but of the unconstitutionality of this measure, I am forced to withhold my approval.

HENRY M. HOYT.

No. 17.

AN ACT

Relative to the lien and collection of taxes and water rents in cities of the third class.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That all taxes and water rents assessed upon real estate in any city of the third class for municipal or school purposes, shall be and remain liens upon the real estate assessed until fully paid and satisfied, and shall be first payable out of the proceeds of any judicial sale, and shall not be divested by any judicial sale except to the extent to which distribution shall be made thereto out of the proceeds of such sale.

SECTION 2. That whenever any real estate, or personal taxes, or water rents in such cities shall become delinquent and be placed in the hands of a collector for collection, the said collector may issue his warrant therefor to any constable or other person, commanding him to levy and collect the same, with costs and fees, of any goods chattels upon the premises, or of the delinquent wherever found; as in the case of distress for rent and for issuing of every such warrant the collector may charge, as costs, the sum of twenty-five cents, and the constable, or other person, to whom said warrant is issued may charge and receive the same fees as allowed for similar services in case of distress for rent: *Provided*, That whenever the goods or chattels of any tenant shall be levied upon for taxes or water rent due by the landlord during said tenant's possession or occupancy of the premises, the said tenant may defalk the same out of the rent.

SECTION 3. The collection of real estate taxes or water rents may be also enforced by filing liens against the real estate at any time after the same become delinquent, and the proceeding to collect the same shall be by writ of *fieri facias*, and the property may be sold as in other cases, but without inquisition or exemption. The owners of property thus sold may redeem the same within one year from the sale by the payment of the amount of the bid, ten *per centum* additional, and all taxes or assessments paid in the meantime, and the court of common pleas shall have jurisdiction for that purpose to make the necessary orders and decrees.

SECTION 4. This act shall not go into force in any of such cities until accepted by the councils thereof by ordinance.

BEN. L. HEWIT,
Speaker of the House of Representatives.
W. I. NEWELL,
President pro tem. of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 30, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 109, entitled "An act relative to the lien and collection of taxes and water rents in cities of the third class."

This bill makes water rents, among other things, liens upon real estate, to be first paid out of the proceeds of judicial sales, and not to be divested by such sale unless covered by distribution of the fund realized, and gives any collector power to distrain for such rents and issue a warrant to a constable to seize any property found on the premises without respect to its ownership, and collect the rent with cost. Further remedy is provided by permission to a lien and for sale of the real estate by *fieri facias*.

I am not willing to confer upon water companies, which happen to be located in cities of the third class, such unusual, oppressive, arbitrary, and unnecessary power. I see no reason why such companies should be afforded higher privileges for the collection of their dues than those enjoyed by other corporations or citizens. The water company's rent has no better claim to special protection than the butcher's or baker's bill; one being no more necessary and inevitable than the others. A first lien on real estate for a tailor's account might be the next step in the direction of this most extraordinary legislation were the door once placed ajar. I am of the opinion that the known and usual remedies for the collection of debts, coupled with the rules and restrictions within the power of the water companies to make, are amply sufficient for their protection, and that legislation which incumbers real estate, wherever situate, with secret first liens, ascertainable only by inspection of the books of private corporations, is essentially vicious, and clothes private persons with arbitrary power to issue warrants to collect debts, without trial or hearing, out of the property of persons who did not contract them.

HENRY M. HOYT.

No. 18.

A SUPPLEMENT

To the charter of the Salisbury Railroad Company, organized under the act concerning the sale of railroads, canals, turnpikes, bridges, and plank roads, in which was filed and recorded in the office of the Secretary of the Commonwealth, on the eighth day of June, Anno Domini one thousand eight hundred and seventy-five.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the Salisbury Railroad Company is hereby authorized to locate and construct an extension of its present railroad from a point at or near its present junction with the Pittsburgh and Connellsville railroad, in Somerset county, to a point on the railroad leading from the State line to Bedford, known as the Bedford and Bridgeport railroad, at or near Buffalo Mills, in Bedford county, and to connect with the said road or any other at or near that point, and to increase its capital stock eight hundred thousand dollars, which shall be divided into shares of fifty dollars each; and said company shall have all the rights and privileges in regard to and upon said extension which it now has under its present charter and existing laws over its present road; and further, the said company are hereby authorized to mortgage said extension of its road to an amount not exceeding twenty thousand dollars per mile, and to issue bonds thereon, bearing interest not exceeding seven per centum, having not more than twenty years to run.

BEN. L. HEWIT,
Speaker of the House of Representatives.
W. I. NEWELL,
President pro tem. of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 30, 1881.

I herewith file in the office of the Secretary of the Commonwealth with my objections, House bill No. 342, entitled "A supplement to the charter of the Salisbury Railroad Company, organized under the act concerning the sale of railroads, canals, turnpikes, bridges, and plank roads, in which was filed and recorded in the office of the Secretary of the Commonwealth, on the eighth day of June, Anno Domini one thousand eight hundred and seventy-five."

If there is any one thing clearly forbidden by the Constitution of 1874, it is that no special act shall be passed creating corporations or amending, renewing, or extending the charters thereof. This act is in direct, palpable, and unmistakable violation of this constitutional prohibition. Article three, section seven.

It is entitled "A supplement to the charter of the Salisbury Railroad Company." Its first and only section grants the right to extend the line of the railroad company, to increase its capital stock, to mortgage the extension, and to issue bonds for a loan. If this be not an amendment of this charter by special act, then such a thing as an amendment is impossible.

It is urged that section seven of article three of the Constitution should be construed in connection with section two, article sixteen. As collated, the reading would be as follows: "The General Assembly shall not pass any special or local law," * * * "creating corporations, or amending, renewing, or extending the charters thereof," * * * "except, and upon the condition that such corporation shall thereafter hold its charter, subject to the provisions of this Constitution." It is, however, manifest that whatever "special law" may be contemplated by section two article sixteen, such laws cannot be among those prohibited by section seven of article three.

HENRY M. HOYT.

No. 19.

AN ACT

Granting a pension to Edwin Hatch.

WHEREAS, Ryland Hatch, a private soldier in company A, Seventeenth regiment, National Guard of Pennsylvania, died in the service of the State, on the third day of August, one thousand eight hundred and seventy-seven, as a result of exposure and fatigue in a forced march from Corry, Erie county, to Franklin, Venango county, Pennsylvania, and also from exposure at Pittsburgh, while in the service of the Commonwealth, during the insurrection in the months of July and August, one thousand eight hundred and seventy-seven, which service was in obedience to military orders from the commander-in-chief of the National Guard of Pennsylvania:

And whereas, The said Ryland Hatch, was the only support and dependence of his father Edwin Hatch, who, from physical disability, is unable to maintain himself, and is in very needy circumstances, having lost his home since he was deprived from the support received from his only son, the said Ryland Hatch; therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the State Treasurer be*

authorized, and required to pay out of any money in the treasury, not otherwise appropriated, to said Edwin Hatch, a pension of seventy-five dollars a year, for and during the life of the said Edwin Hatch, commencing on the third day of August, one thousand eight hundred and seventy-seven, deducting therefrom the amount of the gratuity paid the said Edwin Hatch by authority of an act of Assembly, which became a law on the seventh day of July, one thousand eight hundred and seventy-nine: *Provided*, That the aforesaid pension shall not be paid until due and satisfactory proof of the within stated facts shall have first been made to the Auditor General.

BEN. L. HEWIT,

Speaker of the House of Representatives.

CHARLES W. STONE,

President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, June 30, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 200, entitled "An act granting a pension to Edwin Hatch."

From the preamble it appears that the beneficiary is the father of Ryland Hatch, a private in the National Guard of Pennsylvania, who died from exposure and fatigue in a forced march from Corry to Franklin, and also from exposure at Pittsburgh, while in the service of the State, during the insurrection in July and August, 1877, and that this son was his father's only support, and that the said father is in destitute circumstances.

I have permitted several acts granting annuities and gratuities to widows and orphans of soldiers of the National Guard to become laws by lapse of time, without my approval, being in doubt whether such acts were within the power left to the General Assembly by the Constitution, and being willing to resolve all doubt in favor of the beneficiaries, especially as by section nineteen, article three appropriations may be made for the maintenance of widows and orphans of soldiers in organized institutions, but the case of a father is clearly beyond the constitutional permission given to grant relief for military service.

The eighteenth section of the third article expressly forbids the extension of charitable relief to any person, except for military service. As Edwin Hatch, to whom this appropriation is made, rendered no military service to the State, the Constitution does not permit the General Assembly to confer on him a pension or annuity. The fact of his relationship, poverty, or dependence on his son, who rendered the service, cannot alter the plain mandate of the Constitution. The people choose to close the treasury to demands of this nature, however meritorious, and it is my sworn duty, however disagreeable, to execute the paramount law. If relationship, dependence, and poverty were allowed to lift the bar to relief, then where ought the line to be drawn as to the degree of relationship, and why ought not a person simply dependent and poor to be allowed charity, whether related or not. Safety to the wise provision intended for the protection of the treasury from the importunities of the unworthy, demands an adherence, without exception, to its commands, and I am therefore constrained to withhold my aproval of this bill.

HENRY M. HOYT.

No. 20.

AN ACT

To provide for the mode of ascertaining the damage and injury to property by the construction or enlargement of works, highways, and improvements by municipal and other corporations, and providing for security.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That in all cases now pending or hereafter to arise, wherein the owner or owners of any property is entitled to any damages by reason that said property has been injured or destroyed by the construction or enlargement of the works, highways, or improvements of any municipal or other corporation, the remedy of said owner or owners shall be an action on the case against such municipal or other corporation, in which shall be determined the amount to which (if at all) said property is injured or destroyed. The trial of all proceedings subsequent thereto shall be as now practiced in such form of action, with the right of either side to a writ of error to the Supreme Court: *Provided*, The foregoing provisions shall not apply to any case where a remedy has already been established.

SECTION 2. The security to be given provided for in the eighth section of the sixteenth article of the Constitution of this Commonwealth, shall be the bond of the municipal or other corporation causing such injury or destruction, in such amount, and with one or more sufficient sureties as the court of common pleas of the proper county shall determine, which said bond shall be approved by the said court.

CHARLES W. STONE,
President of the Senate.
BEN. L. HEWIT,
Speaker of the House of Representatives.

EXECUTIVE CHAMBER,
HARRISBURG, July 1, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, Senate bill No. 364, entitled "An act to provide for the mode of ascertaining the damage and injury to property by the construction or enlargement of works, highways, and improvements by municipal and other corporations, and providing for security."

The bill provides, in section one, "That in all cases now pending or hereafter to arise, wherein the owner or owners of any property are entitled to any damages by reason that said property has been injured or destroyed by the construction or enlargement of the works, highways, or improvements of any municipal or other corporation, the remedy of said owner or owners shall be an action on the case against such municipal or other corporation," &c.: *Provided*, The foregoing provisions shall not apply to any case where a remedy has already been established."

Section two provides for securing the compensation to the owner of the property injured or destroyed, by filing bond in the court of the proper county.

I am not certain that I apprehend the exact purport and purpose of this bill. Under existing statutes, a general and complete method of assessing the damages for property taken by municipal and other corporations has been provided.

It is in the main, through the award of viewers, with subsequent appeal and trial by jury in the courts when desired. It has been in operation for many years throughout the entire State, is applicable to all corporations, and I know of no case or class of cases where "a remedy has" not "already been established" for assessment and payment of damages for property *taken* by municipal or other corporations.

But previous to the adoption of the Constitution, "consequential" damages were not so recoverable. The Constitution introduced a new rule or measure of damages. Section eight, article sixteen, prescribes that "municipal and other corporations and individuals *invested with the privilege of taking private property* for public use, shall make just compensation for property *taken*, injured, or destroyed," which compensation shall be paid or secured before such injury or destruction * * * and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury according to the course of common law."

These provisions, while they set up a new rule in the estimate of damages, in no wise repeal or alter the present statutory methods or procedure for ascertaining them.

Viewers and courts, proceeding under the existing laws, are to be governed by the provisions of this section. It was so held by the Supreme Court of Pennsylvania in *City of Reading vs. Althouse*, reported in Weekly Notes, Vol. IX, No. 2. It was there said "that section provides for the making of compensation not only for the *taking* of private property for public use, as was the case theretofore, but also for its *injury or destruction*." * * * "Many cases have been cited upon the part of the city, for the purpose of proving that an action for consequential damages against a corporation possessed of the right of eminent domain cannot be sustained. But these authorities are now of no value, for the new Constitution has introduced a different rule." That rule operates at once, without the intervention of a statute.

Against all corporations "invested with the privilege of taking private property for public use," a remedy has then already been established. Practiced for many years, familiar by long usage, settled by judicial construction, and meeting all the conditions and requirements of justice.

In the case of corporations *not* so invested, I can think of no corporate act, offensive or defensive, for which the common law does not now provide protection and a remedy for both the corporation and the public.

It is difficult to see what wrong or infraction of right is left outstanding, for which no present remedy exists, and this bill would then be without adequate motive.

If it be thought that the doctrine of *City of Reading vs. Althouse* is not correct, or that damages are given by the Constitution in any case where the "injury or destruction" does not result from the "taking," a new act might be required. But in that event, this bill will fail to meet all the exigencies of the case, and will be insufficient. This bill relates only to property "injured or destroyed," and not to property taken. The Constitution, in the sections cited, gives the right to consequential damages in the cases of property "taken, injured, or destroyed." As the Constitution so groups them, so should a statute group them in carrying it into effect. This bill fails to do this. The legislation ought not to be enacted by detail.

Again, I see no reason for adopting the form of the "action in the case," and abandoning all advantages of a judicious tribunal of local viewers in the first instance, with right of appeal and then a trial "by a jury, according to the course of the common law."

If I read this bill in the light of its true theory, it is unnecessary. If I err in regard to the present state of the law on this subject, the bill is not sufficiently wide in its scope. In either event, I see no good reason for changing the tribunal, the practice, and the forms by which damages are to be ascertained, inasmuch as present processes have worked substantial justice and satisfactory results.

HENRY M. HOYT.

No. 21.

AN ACT

For the relief of Thomas F. Kerns, prothonotary of Schuylkill county.

WHEREAS, Thomas F. Kerns, prothonotary of the court of common pleas of Schuylkill county, had, as custodian of moneys, paid into court on deposit in the Miners' Trust Company of Pottsville, to his credit as prothonotary of said court, the sum of twenty-four thousand eight hundred (\$24,800,) dollars, which moneys were only payable on orders or checks, countersigned, and approved by one of the judges of the said court, and which said bank was in good repute and credit to the period of its suspension, and had been for over twenty-five years, the general depository by county officers, of money received by them :

And whereas, By the failure of the said bank, on the fourth day of August, one thousand eight hundred and seventy-six, the said deposit has been entirely lost, except a small percentage thereof, which may possibly reach three per cent. :

And whereas, The said Thomas F. Kerns, has paid out of his private funds, the whole of said deposit, he and his sureties being only bound in the sum of eight thousand dollars, except the sum of thirteen hundred dollars, and which balance he is also ready to pay when ordered by the court to do so ; now, therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the said Thomas F. Kerns be, and he is hereby relieved from payment of such sums as may be due by him, as prothonotary of said county of Schuylkill, in the Commonwealth of Pennsylvania, the amount to be ascertained, and adjusted by the State Treasurer and Auditor General : *Provided, however,* That the aggregate of the sums from which he shall be relieved, shall not exceed the sum of four thousand dollars.

BEN. L. HEWIT,
Speaker of the House of Representatives.
CHARLES W. STONE,
President of the Senate.

EXECUTIVE CHAMBER,
HARRISBURG, July 7, 1881.

I herewith file in the office of the Secretary of the Commonwealth, with my objections, House bill No. 68, entitled "An act for the relief of Thomas F. Kerns, prothonotary of Schuylkill county."

In the preamble of this bill the facts that induced its passage, and upon which must stand or fall, are recited.

It appears that the prothonotary of Schuylkill county deposited money paid into court, in the Miners' Trust Company of Pottsville, a bank of

good repute, and which had been for over twenty-five years the general depository for county officers, and that such funds could only be drawn out on order of the court. The bank failed, and a large sum of money belonging to private parties was lost, which the prothonotary has since made good. It does not appear that any part of the money thus deposited were funds of the State.

He is indebted to the State for tax on writs, and the purpose of the bill is to give him a credit settlement not exceeding four thousand dollars on his account, and thus relieve him from the payment of that sum into the treasury.

This amounts to an appropriation of the sum of four thousand dollars of State funds to the prothonotary of Schuylkill county, in consideration of the losses suffered by him by reason of the failure of the said bank. I find no warrant, but rather an express prohibition in the Constitution of such disposition of the public funds.

By the eighteenth section of the third article, the General Assembly is forbidden to make "appropriations except for pensions, or gratuities for military services, for charitable, educational, or benevolent purposes, to any person or community." While the misfortunes of the beneficiary in this bill excite commisseration, they do not justify departure by the General Assembly, either directly or indirectly, from so plain and stringent a constitutional prohibition.

If, by the order of the court, he was required to deposit funds paid into court in a particular bank, such order ought, and doubtless would shield him from personal loss. If he chose to deposit without such order, he took the risk of failure and cannot now in justice, equity or reason, any more than any other citizen who has suffered misfortune, call upon the State to make good his losses in whole or in part.

HENRY M. HOYT.



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